

1 If Texas enacts a photo ID bill, it will
2 join only seven other states that request a photo ID
3 to vote, states disproportionately among the 11 states
4 of the former Confederacy. This, in my opinion, as a
5 scholar whose work is focused on the protection of
6 minority voting rights for more than 40 years, would
7 be an egregious step backward for my native state, one
8 which harks back to the post-reconstruction era
9 disfranchisement whose effects Barbara Jordan and
10 Dr. Lonnie Smith fought with such courage to put
11 behind us. Thank you.

12 **QUESTIONS FROM SENATE FLOOR**

13 SEN. DUNCAN: The Chair recognizes
14 Sen. Shapleigh.

15 SEN. SHAPLEIGH: Thank you, Mr. Chair.

16 Dr. Davidson, let's go over your CV and
17 see just exactly what you've done to get your
18 reputation here in Texas as the leading expert on
19 these issues. You since the '90s have joined with
20 Professor Bernard Grofman with the University of
21 California to do a multi-year study on the Voting
22 Rights Act of 1965, have you not?

23 MR. DAVIDSON: Yes, sir.

24 SEN. SHAPLEIGH: And how many people
25 were involved in that, political scientists,

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1 historians, sociologists, voting rights lawyers,
2 others?

3 MR. DAVIDSON: About 30 people, yes,
4 sir.

5 SEN. SHAPLEIGH: And what was the result
6 of that multi-year study? Did you write a book? Did
7 you put out a paper?

8 MR. DAVIDSON: We wrote a book entitled
9 Quiet Revolution in the South, published by Princeton
10 University Press. And in 1994, it had funding from
11 the National Science Foundation and the Rockefeller
12 Foundation. And it was designed to measure the impact
13 of the Voting Rights Act of 1965 on the states that
14 were covered by it -- no, the southern states, the
15 states that are covered by Section 5 of the Voting
16 Rights Act.

17 SEN. SHAPLEIGH: Now, has this work been
18 cited in Supreme Court opinions, United States Supreme
19 Court opinions?

20 MR. DAVIDSON: Senator, I can't
21 remember. A number of pieces of my research have, but
22 I'm not sure that that one has. It was entered in its
23 entirety into the congressional record in 2006 when
24 the question of reauthorizing the nonpermanent
25 features of the Voting Rights Act were under

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1 discussion and when those features were coming up for
2 renewal.

3 SEN. SHAPLEIGH: Were you asked to serve
4 on and did you serve on the National Commission on the
5 Voting Rights Act?

6 MR. DAVIDSON: Yes, sir.

7 SEN. SHAPLEIGH: And what was the result
8 of that work?

9 MR. DAVIDSON: The Commission held ten
10 hearings around the state -- around the country,
11 various parts of the nation to hear people testify as
12 to problems of voting that they encountered. And on
13 the basis of those hearings and other research, I was
14 tasked with drafting the report that the Commission
15 ultimately published entitled Protecting Minority
16 Voters.

17 SEN. SHAPLEIGH: Now, we've heard from a
18 bunch of folks from Indiana, a bunch from Georgia. Is
19 it safe to say you're the leading expert in Texas on
20 the Voting Rights Act?

21 MR. DAVIDSON: I am one expert, yes.

22 SEN. SHAPLEIGH: Let me ask you this:
23 You've recited in your paper, you've recited in your
24 testimony here the long and sad and dark history of
25 voter suppression in the State of Texas. Do you have

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1 any doubt having looked at what is going on here today
2 that this bill is in line with that long, dark history
3 as an act of voter suppression?

4 MR. DAVIDSON: Senator, it looks to me
5 as though it does fall within that historical
6 framework.

7 SEN. SHAPLEIGH: Let me ask you this:
8 When we look at this bill and based on your Texas
9 studies, as this bill will be enforced, we've looked
10 at the fiscal note, this is going to be enforced by
11 poll workers all across the vast diverse state, 24
12 million people from the border to the Panhandle, is
13 there serious potential for discriminatory enforcement
14 of the ID requirements that are contained in this bill
15 at the polls?

16 MR. DAVIDSON: Yes, sir, I think there
17 are. One of the things that came through in the
18 hearings which the National Commission on the Voting
19 Rights held across the country and especially in areas
20 with significant Hispanic populations was that there
21 is still a great deal of difficulty that Hispanics
22 encounter voting.

23 When they get to the polls -- there was
24 a study that was presented by a former member of the
25 Justice Department and a special -- and another who is

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1 a specialist in voting at the University of Arizona
2 which looked into the question of how well the Voting
3 Rights Act law regarding language minorities was being
4 conducted at the polling places. And it was found
5 that a significant percentage of Latinos in many of
6 these areas experienced difficulties, and that the
7 actual laws governing language for Latinos and some of
8 the other ethnic minorities were not being enforced.

9 SEN. SHAPLEIGH: Let me ask you this:
10 You are from Texas. Is that correct?

11 MR. DAVIDSON: Yes, sir.

12 SEN. SHAPLEIGH: As a matter of fact,
13 you've spent a lot of time right in these border
14 counties that Sen. Watson has been talking about. Is
15 that true?

16 MR. DAVIDSON: That's correct. I was
17 born on a cattle ranch between Alpine and Fort Davis,
18 Texas.

19 SEN. SHAPLEIGH: So you do know what a
20 colonia is?

21 MR. DAVIDSON: I do indeed.

22 SEN. SHAPLEIGH: Let me ask you this:
23 Let's talk about the Hispanics in the State of Texas.
24 I represent a community that is 77 percent Hispanic.
25 55 percent make less than \$35,000 a year. I just

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1 looked that up in the 2000 census numbers. 73 percent
2 speak Spanish as a primary language. So you've got --
3 in addition to the income issues that we see in some
4 of these other cases, you've got the language barrier
5 issues that are not common in Georgia, not common in
6 Indiana. Based on your studies, what potential exists
7 under this bill for discriminatory enforcement of ID
8 requirements at the polls given that language barrier?

9 MR. DAVIDSON: I think there's a
10 significant possibility of problems there, and that
11 goes back to what I mentioned just a minute ago with
12 regard to the finding of how Latinos are treated at
13 polling places.

14 SEN. SHAPLEIGH: Let me ask this
15 question: Many here on this floor have made the
16 allegation and believe that noncitizen Hispanics are
17 voting in large numbers in the State of Texas. We've
18 heard from the Attorney General that there is an
19 epidemic of voter fraud, many quotes in different
20 publications about illegal aliens coming and voting in
21 the State of Texas. Based on your studies and what
22 you know, is there any evidence whatsoever that
23 noncitizen Hispanics are voting in large numbers
24 illegally in this state?

25 MR. DAVIDSON: Well, first of all,

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1 Senator, I have not directly addressed that question
2 in any of my studies. So I can't -- I really can't
3 provide an answer based on that. But I will say that
4 it seems to me that given the \$1.4 million that
5 General Abbott spent trying to -- trying to uncover
6 voter fraud and the fact that over a three-year period
7 he has essentially not done so, and to my knowledge,
8 this is the largest effort by the State of Texas in
9 modern history, perhaps ever, to uncover voter fraud,
10 it strikes me as not very plausible that there is much
11 voting going on among illegals in the state, although
12 there's a significant number of them, perhaps as many
13 as 2 million according to the anti-immigration group
14 FAIR.

15 SEN. SHAPLEIGH: Let me ask you this:
16 There has been much made about a free ID being offered
17 in connection with the administration of this act.
18 What, in your opinion, are the hidden costs of getting
19 such a free ID?

20 MR. DAVIDSON: Well, several people have
21 mentioned some of the hurdles and, of course, one of
22 them is just the difficulty that people who don't have
23 automobiles and are poor have in getting a driver's
24 license, the of lack accessibility of DPS and things
25 of that sort.

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1 SEN. SHAPLEIGH: When one goes to get
2 one of the other documents that are permitted under
3 this bill, a birth certificate, for example, is there
4 a cost attached to getting that to produce that for
5 the free ID?

6 MR. DAVIDSON: What was the example that
7 you gave, sir?

8 SEN. SHAPLEIGH: Birth certificate.

9 MR. DAVIDSON: Yes, that -- that can be
10 rather expensive. And, in fact, some of the -- some
11 of the studies that were done in the Indiana case
12 where the ID was -- the government issued ID was all
13 supposed to be free indicated that people often had to
14 spend a good deal of money and a good deal of time
15 getting birth certificates and/or material that
16 indicated that they were born in the United States.

17 SEN. SHAPLEIGH: In my district, I
18 believe the charge is \$22 for a birth certificate to
19 get one in order to go get the free ID. Would that,
20 in your opinion, be a barrier to folks trying to
21 achieve a constitutional right to vote?

22 MR. DAVIDSON: When the 24th Amendment
23 outlawed the poll tax in Texas in the middle 1960s,
24 the tax, as I recollect, was \$1.50, and in some
25 counties there was a 25 percent surcharge, so that

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1 would bring it to \$1.75. And in today's dollars, that
2 would be somewhere around \$11. So the figure that you
3 have quoted is almost twice as high as the poll tax
4 laws in current buying power when it was abolished.

5 SEN. SHAPLEIGH: Thank you, sir. Thank
6 you for coming.

7 MR. DAVIDSON: Thank you.

8 SEN. DUNCAN: The Chair recognizes
9 Sen. Williams.

10 SEN. WILLIAMS: Thank you,
11 Mr. President.

12 Mr. -- Dr. Davidson. Correct? I want
13 to be sure. Is that --

14 MR. DAVIDSON: Yeah.

15 SEN. WILLIAMS: Do I have your name
16 right? Okay. Thank you.

17 A couple of questions. As I read your
18 written testimony, you say some things here that
19 really call up some unfortunate parts of our history
20 here in Texas with relation to racial issues and
21 voting. And I think the one that strikes me the most
22 is the poll tax. And you say that the poll tax is --
23 was one of the most disenfranchising mechanisms of
24 its day. Tell me how you think this bill, Senate
25 Bill 362, help me understand how you believe that this

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1 imposes a poll tax on voters.

2 MR. DAVIDSON: Well, as I explained to
3 the other Senator just a minute ago, it is sometimes
4 expensive to get various forms of photo ID that are
5 required to vote.

6 SEN. WILLIAMS: Well, have you read our
7 Senate Bill 362? Have you reviewed the bill?

8 MR. DAVIDSON: Yes. I reviewed it
9 briefly, yes.

10 SEN. WILLIAMS: Well, did you read the
11 whole bill?

12 MR. DAVIDSON: Yes.

13 SEN. WILLIAMS: You did? And did you
14 note in the bill that you don't need a photo ID to
15 vote? You can also bring alternate forms --

16 MR. DAVIDSON: Yes.

17 SEN. WILLIAMS: -- of information, like
18 a utility bill and a government check or a social
19 security document, or it could be a Medicare
20 enrollment card, those kinds of things that might be
21 very common for people, especially the kinds of folks
22 that you're talking about, to have? And you still
23 think this imposes a poll tax even in light of the
24 alternate forms? All you talked about and all you
25 referenced in the paper here is the cost of a photo

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1 ID. But isn't it true, in fact, that there are
2 alternate forms of identification that are available
3 that would be available to most people at no cost?

4 MR. DAVIDSON: In that case, if it's not
5 a photo ID that's shown at the polls, isn't one
6 required to cast a provisional ballot?

7 SEN. WILLIAMS: No.

8 MR. DAVIDSON: No?

9 SEN. WILLIAMS: No, if you bring two
10 alternate forms of identification -- and there's a
11 list in the bill. I'd be glad to read them to you if
12 you'd like for me to do that.

13 MR. DAVIDSON: Could you do that,
14 please?

15 SEN. WILLIAMS: Yes, yes, give me just a
16 second to get that in front of me. Okay. "the
17 following documentation is acceptable as proof of
18 identification under this chapter. Any two of these
19 items would be sufficient: A copy of a current
20 utility bill; a bank statement; a government check, a
21 paycheck or other government document that shows the
22 name and address of the voter; official mail addressed
23 to the voter -- addressed to the person by name from a
24 governmental entity; a certified copy of a birth
25 certificate or other document confirming birth that is

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1 admissible in a court of law and establishes the
2 person's identity; United States citizenship papers;
3 an original or certified copy of a marriage license or
4 a divorce decree; court records of the person's
5 adoption, name change or sex change; an identification
6 card issued to the person by a governmental entity of
7 this state or the United States for the purpose of
8 obtaining public benefits, including veterans'
9 benefits, Medicaid or Medicare; a temporary driving
10 permit issued to the person by the Department of
11 Public Safety; a pilot's license; a library card that
12 contains the person's name issued to the person by a
13 public library located in this state; or a hunting and
14 fishing license issued by the Parks & Wildlife
15 Department."

16 Now, really, Dr. Davidson, do you think
17 it's so burdensome that if we're going to allow
18 someone to bring a copy of a government-issued
19 document of any type plus a library card or anything
20 issued by a government entity like that, I mean,
21 that's a pretty long list, is that really that
22 burdensome? All the things that you talked about, how
23 do you call this a poll tax if we're giving these
24 alternate forms of ID?

25 MR. DAVIDSON: I think for some people

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1 it will be difficult to get those kinds of things.

2 SEN. WILLIAMS: But is it a poll tax?

3 That's my question.

4 MR. DAVIDSON: Well, it's not officially
5 a poll tax.

6 SEN. WILLIAMS: No, it wouldn't be a
7 poll tax.

8 MR. DAVIDSON: It would be a burden of
9 time or in some cases money, yes.

10 SEN. WILLIAMS: Yes. And didn't the
11 Supreme Court speak to that very point in their
12 opinion in the Crawford case? Are you familiar with
13 that?

14 MR. DAVIDSON: Yes.

15 (Simultaneous discussion)

16 SEN. WILLIAMS: Okay. And I believe
17 that what the Supreme Court said that burdens of that
18 sort arising from life's vagaries, however, are
19 neither so serious nor frequent to raise any question
20 about the constitutionality. The availability of the
21 right to cast a provisional ballot provides an
22 adequate remedy to the problems of that character.

23 So in addition to the long list of
24 alternative documents that we would allow under the
25 provisions of Senate Bill 362, we also have the

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1 provisional ballot provisions that are referenced
2 here, and we don't require them to come back like the
3 other states do.

4 Now, I just fail to see -- I think it's
5 very inflammatory for you to come before this body and
6 talk about the legislature imposing a poll tax when
7 the bill doesn't provide for that at all, and, in
8 fact, recognizes that the very things that
9 Sen. Shapleigh has been talking about over here, the
10 burden of having to come up with some of these
11 documents might be too much, and we provided these
12 alternate forms. I just don't think that's fair at
13 all.

14 MR. DAVIDSON: Well, we disagree on
15 that, and four members of the Supreme Court apparently
16 disagreed, too, with regard to the issue --

17 SEN. WILLIAMS: Now --

18 MR. DAVIDSON: -- that it was not a poll
19 tax.

20 SEN. WILLIAMS: I believe that you
21 referenced also in your remarks earlier the Attorney
22 General and the record that he had in his failure to
23 find any voter fraud after expending a vast sum of
24 money, I believe you said \$1.9. I think it's actually
25 \$1.4 million that the Special Investigations Unit

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1 spent. Did you speak of that earlier? Did I --

2 MR. DAVIDSON: I believe I did, yes.
3 \$1.4 million, yes.

4 SEN. WILLIAMS: Right. Okay. Maybe I
5 misunderstood you, but it was, in fact, \$1.4 million
6 that was erroneously reported in a newspaper that the
7 funds were spent on election fraud and enforcement.
8 In '03 the Office of the Attorney General launched a
9 Special Investigations Unit. Initially it was funded
10 by a Justice Department grant that's administered by
11 the Governor's Office. Contrary to the reports that
12 you seem to have bought into without any real digging
13 into the facts is that the SIU, the Special
14 Investigations Unit, it handles many types of cases,
15 not just election fraud.

16 Here are some of the cases that they
17 were involved in: The El Dorado YFZ Ranch, we had
18 three Special Investigation Unit investigators that
19 are currently assigned there full time to that case;
20 the Texas Youth Commission, including a case where a
21 TYC officer was indicted for drug possession, they
22 handled more than 840 abuse allegations; hurricane
23 related rapid response efforts, including serving
24 subpoenas on potential price gougers; market
25 manipulation and penny stock fraud case that was

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1 jointly pursued with the Securities and Exchange
2 Commission; an ERCOT case; the Cyber Crimes Unit and
3 Fugitive Unit assistance for combined arrests of over
4 100 cyber predators and child pornographers and more
5 than 1,000 fugitives; identity theft; public
6 corruption, including a Bastrop County case and the
7 Potter County Sheriff's case; money laundering,
8 including investigations into the bulk transportation
9 of drug currency, money couriers and money services
10 businesses; and then finally election fraud.

11 Now, I don't think it's fair for you to
12 come before this body and characterize that
13 \$1.4 million as an investigation into election fraud
14 when, in fact, some of the most horrific things that
15 have happened in this state that the AG has had to get
16 involved in, that's what they've been spending that
17 money on.

18 MR. DAVIDSON: "Vote fraud has been an
19 epidemic in Texas for years, but it hasn't been
20 treated like one, Abbott said, in announcing the SIU.
21 It's time for that to change. He promised that his
22 newly created Special Investigations Unit would help
23 the Police Departments, Sheriff's Offices and District
24 and County Attorneys successfully identify,
25 investigate and prosecute various types of voter fraud

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1 offenses. Established with a \$1.4 million grant from
2 the Governor's Office, the SIU would have as one of
3 its prime responsibilities investigating voter fraud
4 allegations, he said. Abbott targeted 44 counties
5 containing 78 percent of registered voters in the
6 state. According to the Austin American Statesman,
7 complaints originate from voting officials, District
8 Attorneys or citizens and are sent to the Secretary of
9 State or the Attorney General. Each complaint is
10 evaluated by a professional employee to determine
11 whether the complaint is legitimate and warrants
12 further investigation."

13 Now, that sounds to me like the Attorney
14 General was certainly representing this as a major
15 effort to uncover voter fraud.

16 SEN. WILLIAMS: So whatever you read in
17 the paper, that's what you pretty much take at its
18 face value?

19 MR. DAVIDSON: Most of what I quoted,
20 Senator, is taken from the Attorney General's Website
21 when he was announcing this voter fraud initiative.

22 SEN. WILLIAMS: Dr. Davidson, for the
23 record, to date the Office of the Attorney General has
24 resolved 22 election fraud prosecutions at a cost of
25 approximately \$600,000. There are an additional eight

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1 election fraud indictments that are pending currently.
2 There has been approximately \$100,000 spent on those
3 eight cases. And of the 700,000 -- of \$700,000 spent
4 on election code investigations, about \$93,000 of that
5 came from Department of Justice grants. DOJ grants
6 aren't used to fund these Special Investigations Units
7 any longer, and it's now funded with general revenue
8 from the state.

9 So I just felt like when you come before
10 this body and you make allegations about a poll tax
11 being levied on voters and you haven't even read the
12 bill to know what the alternative voting provisions
13 are, and you then come and accuse our Attorney General
14 of doing something with that Special Investigations
15 Unit without even really looking into what the unit
16 had really cost, I just felt like the record needed to
17 be set straight.

18 Thank you very much. I appreciate you
19 being here so late at night.

20 MR. DAVIDSON: Thank you, sir.

21 SEN. CARONA: Sen. Van de Putte, for
22 what purpose?

23 SEN. VAN de PUTTE: I would like to
24 hold, Mr. President, until -- Sen. Shapleigh, I think,
25 would like to continue on this, and then I have a

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1 separate set of questions for the professor.

2 SEN. CARONA: Okay. Sen. Ellis, for
3 what purpose do you wish to be recognized?

4 SEN. ELLIS: On this point to just ask a
5 couple of questions.

6 SEN. CARONA: Certainly.

7 SEN. ELLIS: Dr. Chandler, thank you for
8 being here at this late hour. I know you've been here
9 all day. I think you mentioned the year the poll tax
10 was enacted in Texas. I think you said it was 1901.

11 MR. CHANDLER: Yes, sir.

12 SEN. ELLIS: And then it was abolished
13 by the courts in 1966, so from about --

14 MR. CHANDLER: It was the 24th
15 Amendment.

16 SEN. ELLIS: Yeah. So I guess the 24th
17 Amendment abolished it, but I think it took us a
18 little longer to --

19 MR. CHANDLER: It was actually the
20 result -- I mean, once that had been abolished, there
21 was a court case that was heard --

22 SEN. ELLIS: Yeah.

23 MR. CHANDLER: -- in Texas I think right
24 after the Voting Rights Act was passed, yeah.

25 SEN. ELLIS: So I assume the Attorney

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1 General in Texas at the time or the Members of this
2 body didn't see fit to come in and abolish it right
3 away?

4 MR. CHANDLER: That's correct.

5 SEN. ELLIS: It was a long and tortious
6 road to get there. So about 62 years we had a poll
7 tax in Texas.

8 Now, I assume you're guessing, but I
9 just want your opinion on, do you think anybody on
10 this floor has pulled up the legislation and read the
11 poll tax bill in Texas? Just a guess.

12 MR. CHANDLER: I doubt it. I don't
13 know.

14 SEN. ELLIS: Okay. Just as someone was
15 asking you whether or not you read every word in this
16 bill, I happen to agree with you, this bill is nothing
17 more than a modern day poll tax. And if it hurts
18 somebody's feelings because it's referred to as that,
19 well, let their feelings fall where they may.

20 You're a student of history, a great and
21 respected student of government and history. I assume
22 when Members sat in these chairs on this floor at
23 these desks in 1901, 1902 or maybe 1899 in a session,
24 maybe a special session -- I don't know if they had to
25 suspend the rules to do it by 16 votes or if they

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1 could get their 21 or 31 pretty darn easily. Do you
2 have any sense -- could you give us some sense of what
3 you think the discussion was like, or do you think
4 anybody got up in one of these -- behind one of these
5 desks and said "Maybe if we have a poll tax it will
6 have a disproportionate impact on certain groups of
7 people"?

8 MR. CHANDLER: I think that was
9 certainly well understood whether it was said on the
10 floor or not.

11 SEN. ELLIS: If you were guessing, what
12 kind of people probably would not have had a sex
13 change or have two forms of government -- two letters
14 that they can bring in, maybe they wouldn't have a
15 light bill or maybe they wouldn't have a library card
16 because they're not reading books, would you assume
17 that most of those people are probably low income?

18 MR. CHANDLER: Yes, sir.

19 SEN. ELLIS: Most of them are probably
20 African-American or Hispanic?

21 MR. CHANDLER: Yes, sir.

22 SEN. ELLIS: Would you assume that most
23 of them would probably vote in the Democratic Party
24 for whatever reason?

25 MR. CHANDLER: Now, we're talking about

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1 1901?

2 SEN. ELLIS: No, no, we're talking about
3 this bill.

4 MR. CHANDLER: Oh, now, yes. I'm sorry.

5 SEN. ELLIS: I'm sorry. Yes, under this
6 bill.

7 MR. CHANDLER: Yes.

8 SEN. ELLIS: Yeah, I know my colleague
9 went through a long litany of things. And as I
10 listened to him, I was thinking maybe some of our
11 colleagues on this floor don't run into people who
12 fall into those categories because they don't get
13 invited to dinner parties, or maybe they don't show up
14 at the legislature. Maybe they don't have the ID to
15 get a Southwest Airlines flight to get here. Maybe
16 they don't like getting searched or going into the
17 back room. Maybe they don't have the money to get a
18 ticket on Southwest Airlines.

19 So my question was, do you think most of
20 those people who would fall under that laundry list of
21 people who wouldn't have those forms of identification
22 would probably be African-American or Hispanic?

23 MR. CHANDLER: Yes, sir.

24 SEN. ELLIS: So there is a corollary
25 between the people who would not meet the requirements

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1 laid out in this bill and the people who would not
2 comply with the requirement to pay a dollar or dollar
3 and a half to pay a poll tax?

4 MR. CHANDLER: Yes, sir.

5 SEN. ELLIS: Okay. I think it's a
6 perfect analogy, and I appreciate you being here.

7 MR. CHANDLER: Thank you.

8 SEN. CARONA: Senator Shapleigh, do you
9 wish to be recognized?

10 SEN. SHAPLEIGH: I do, Mr. Chair.

11 SEN. CARONA: You're recognized.

12 SEN. SHAPLEIGH: Dr. Davidson, you were
13 questioned about representations by the Attorney
14 General, and I think you accurately had actually read
15 his press release. Do you recall that he sent out a
16 press release in connection with his investigation
17 launch that he intended to do in March of 2006?

18 MR. CHANDLER: Yes, sir. In fact I went
19 back and just tread it a couple of days ago. It's on
20 his Website.

21 SEN. SHAPLEIGH: And do you recall him
22 in that press release saying "In Texas an epidemic of
23 voter fraud is harming the electoral process"?

24 MR. CHANDLER: Yes, sir.

25 SEN. SHAPLEIGH: And it's in his own

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1 press release where he announces he's going to
2 dedicate a \$1.5 million grant from the Governor's
3 Office. That's where that number came from. Correct?

4 MR. CHANDLER: That's correct. Not out
5 of the newspaper, but from him.

6 SEN. SHAPLEIGH: Mr. Chair, if I may,
7 I'd like to make this a part of the record as
8 Exhibit 30, which is the Attorney General's press
9 release titled Helping Stamp Out Voter Fraud in Texas
10 from March of 2006.

11 (Exhibit No. 30 marked and admitted)

12 SEN. CARONA: Senator Shapleigh, if
13 you'd bring it forward, please? Have you concluded
14 your remarks?

15 SEN. SHAPLEIGH: Yes, sir.

16 SEN. CARONA: The Chair recognizes
17 Sen. Van de Putte.

18 SEN. VAN de PUTTE: Thank you,
19 Mr. Chairman.

20 Professor, thank you for being here. I
21 know that it has been a long day and now I guess
22 beginning a couple hours into the second day. You are
23 probably one of the best national scholars on historic
24 suppression and disenfranchisement of certain classes
25 of voters. Is that correct?

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1 MR. CHANDLER: Yes, ma'am.

2 SEN. VAN de PUTTE: And because of that
3 you are now -- you are considered Professor Emeritus
4 at Rice, one of our prestigious universities here in
5 Texas and one that is nationally and internationally
6 renowned. And is that right, you are --

7 MR. CHANDLER: Yes, ma'am.

8 SEN. VAN de PUTTE: -- Emeritus? With
9 the work that you have done, much of what had been
10 documented in other states was a poll tax. I would
11 like for you to comment on literacy tests and how they
12 were used. And I think one reason why that is so
13 important is because for the first time the State of
14 Texas was called into that Section 5 on Hispanics and
15 language barriers because not just of the poll tax,
16 but because of the literacy test.

17 And I'm going to explain what happened
18 to my own very mother, and if you could elaborate in
19 your research if this was something that occurred
20 rarely or something that occurred pretty often. My
21 mother in 1952 was going to cast her first vote in a
22 presidential ballot. My mother, a college sophomore
23 at the time, went to the polls with her poll tax to
24 cast that ballot.

25 Now, in San Antonio, what they used to

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1 do with people who had Spanish names is they put them
2 in a room until enough people got there, and then
3 somebody would go administer a reading test. And for
4 my mother she was one of about ten or twelve she said,
5 and she waited and then she got administered a reading
6 test. Now, she was in a group of she said ten or
7 twelve, she didn't remember, and being a college
8 sophomore she thought she probably had a pretty good
9 chance of passing that reading test. But because she
10 had the audacity to be in a group with someone who
11 supposedly failed, none of those people were allowed
12 to vote, none of them. That's how they
13 disenfranchised my mother and people with Spanish
14 surnames.

15 And so when I took my mom to the
16 Democratic National Convention in August of last year,
17 she cried every day because she was at a convention,
18 and the first time she tried to cast a ballot she was
19 discriminated against because her maiden name was
20 Aguilar, and her name was Maria Isabella Aguilar.

21 Knowing now what you know about my
22 family, and some of my colleagues just can't seem to
23 understand why we just can't get over it, that
24 happened a long time ago, and they keep questioning
25 "Why do we have to go to the Justice Department? Why

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1 do we have to do this?" Well, that's what happened to
2 my family, and yet we know there are records not only
3 of poll tax, but we have pretty good accounts of what
4 occurred in South Texas communities as well.

5 Given the fact that that's just personal
6 family history and that you have studied this, how
7 prevalent was that discrimination and those tools, not
8 just the poll tax, but reading tests and literacy
9 tests and not just owning property, but how was that
10 used and how is that different from just one more
11 barrier, one more hoop to jump for someone to cast a
12 ballot as proposed in this bill today?

13 MR. CHANDLER: Well, it's certainly true
14 that Latinos in Texas have been severely discriminated
15 against. The White Primary, the Democratic Party, in
16 most places allowed Latinos as distinct from blacks
17 from voting, but they were local White Primaries along
18 the border that were set up by individual counties.
19 And so they suffered much of the same discrimination
20 in that regard that blacks did.

21 The State of Texas officially did not
22 have a literacy test like some of the other southern
23 states did, but at the same time there is much
24 anecdotal evidence of the kind that you have just
25 described about Hispanics being treated differently

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1 and being required essentially to pass an informal
2 literacy test.

3 And continuing up into the current time,
4 there are efforts that have been documented to put the
5 fear of God into Latinos going to vote, such things as
6 people standing outside the polling place and taking a
7 video -- videos of them and of their license plates.
8 There have been incidents of people dressing up in
9 official looking outfits, police-appearing uniforms
10 and informing Latinos who come up to the polls that
11 they better look out. If they are not legal, they may
12 be in big trouble. And some of my historian
13 colleagues and I at Rice a few year ago uncovered a
14 number of those instances in Texas and throughout the
15 southwest with regard to Latinos.

16 So this is not -- what your mother
17 experienced, well, it is not ancient history that
18 Latinos are still being discriminated against at
19 polling places in the southwest, including the State
20 of Texas.

21 SEN. VAN de PUTTE: Professor, I know
22 that you've done a lot of work in this, and certainly
23 the books that you've used and much of the case law
24 and much of the folks that studied this have said that
25 you are pretty much the expert on this. And although

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1 reading our bill I'm still a little bit confused
2 because as I read it, everybody is going to have to
3 have at least that voting -- the certificate that's
4 issued by the elections administrator of that
5 jurisdiction and a photo identification. But I worry
6 that if you don't have that with you and with no money
7 put in to the fiscal note to do any education,
8 training of poll workers, when in your work, in your
9 research, is there any effect when those officials who
10 are supposed to be administering the election, the
11 election clerks and judges, is there any evidence to
12 show us when there is not sufficient training of
13 those?

14 And particularly with the litany of
15 documents that could be possibly used, is that --
16 should that give us pause with no training about how
17 this is going to be enacted and what's going to happen
18 basically at the grassroots level? Does this have the
19 potential to cause further disenfranchisement of
20 Hispanics, blacks and those people in poverty, given
21 the fact that we have zero dollars in that fiscal note
22 for the training?

23 MR. CHANDLER: That would certainly be
24 my supposition, Senator.

25 SEN. VAN de PUTTE: Thank you,

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1 Professor. I appreciate you being here till two in
2 the morning.

3 MR. CHANDLER: Thank you.

4 SEN. CARONA: Members, is there anyone
5 else with a question for the professor?

6 SEN. LUCIO: Mr. President?

7 SEN. CORONA: It appears not.

8 SEN. LUCIO: Mr. President?

9 SEN. CORONA: Senator, for what purpose?

10 SEN. LUCIO: Just to ask a question or
11 two. I might not have another chance to do this with
12 this professor. I'd like to ask a question.

13 SEN. CARONA: You're recognized.

14 SEN. LUCIO: Thank you, Mr. President.

15 And very briefly, Professor, thank you. I join my
16 colleagues in welcoming you here and commending you
17 for all your studies over the years.

18 MR. CHANDLER: Thank you.

19 SEN. LUCIO: Leticia Van de Putte,
20 Senator Van de Putte, reflected on literacy tests. My
21 father worked at the Sheriff's Office for 30 years in
22 Cameron under about four different Sheriffs and, of
23 course, he took me to a lot of political parties in
24 the old days when I was just a kid, and I heard many
25 stores obviously along the way.

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1 And I want to ask you, in your
2 studies -- you also included some of these studies,
3 and one was when the poll tax was in effect, I'm told
4 that the politicians, those obviously in power, would
5 buy all the poll taxes that people needed as long as
6 obviously they had control over those votes.

7 MR. CHANDLER: Yes, there were machines
8 along -- along the border, yes.

9 SEN. LUCIO: Exactly. Now, that being
10 the case and putting it -- comparing that to today's
11 standards in terms of illegal activities during the
12 election -- during the elections that took place then,
13 buying or purchasing the poll tax for somebody and
14 then driving them to the polls and then making sure
15 they voted a certain way, what kind of -- what kind
16 of -- let's say the Attorney General -- what kind of
17 prosecution would those individuals be -- you know, be
18 in effect -- be affected by under the laws of today?
19 How could they be prosecuted? I mean, in today's --
20 with today's laws, how would those people back then be
21 prosecuted? Could they be prosecuted?

22 MR. CHANDLER: You mean the bosses who
23 would buy poll taxes?

24 SEN. LUCIO: What would they be subject
25 to in terms of today's laws and being prosecuted for

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1 those kinds of political activities? Is what I'm
2 trying --

3 MR. CHANDLER: Well, they -- I mean, it
4 would certainly be illegal, and they would be -- if
5 the law were carried out like it was supposed to be,
6 they would certainly be prosecuted if their behavior
7 came to light.

8 SEN. LUCIO: And the point I wanted to
9 make is simply this: That that, in fact, took place.

10 MR. CHANDLER: Yes.

11 SEN. LUCIO: And that was part of the
12 suppression. That was part of what Hispanics or
13 Latinos or Mexican-American citizens on the north side
14 of the border, Texas-Mexico border went through, and
15 maybe some of the Members here on this floor are
16 not -- are not aware of, and I wanted to share that
17 because that was just rampant. That was just part of
18 any politics at the time in the 19 what, '40s, '50s?

19 MR. CHANDLER: Into the '50s certainly.
20 The old machines were the Patronos, and it was almost
21 a feudal relation. And the Latinos were looked upon
22 as inferior, as foreign in some sense, as people to be
23 manipulated and used for the purposes of the -- of the
24 Patronos, and that's -- that is undeniable Texas
25 history.

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1 SEN. LUCIO: I lived those days as a
2 young boy. I remember them, and I think that's what
3 Sen. Van de Putte was pointing out as to bad memories
4 of past. Thank you.

5 MR. CHANDLER: Yes. Thank you.

6 SEN. DUNCAN: There are no more -- no
7 more questions in the queue. So you are free to -- or
8 excused. Thank you for your testimony.

9 MR. CHANDLER: Thank you, sir.

10 **TESTIMONY BY ED JOHNSON**

11 SEN. DUNCAN: The Chair calls
12 Ed Johnson. Okay. Mr. Johnson, I think you have some
13 documents you'd like to introduce into the record.
14 We'll mark those as Exhibit No. 31, and they'll be in
15 the record.

16 (Exhibit No. 31 marked and admitted)

17 SEN. DUNCAN: Identify -- let me
18 identify these as it looks like records that are from
19 specific voting documents. So at some time in your
20 testimony I assume you'll explain these. Exhibit 27
21 or -- 32? I'm sorry. Exhibit 32 will be received in
22 the record.

23 (Exhibit No. 32 and 33 marked and
24 admitted)

25 SEN. DUNCAN: You have ten minutes.

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1 State your name and who you represent.

2 MR. JOHNSON: Okay. Good morning. My
3 name is Ed Johnson. I'm with the Harris County Tax
4 Office, and in Harris County the Tax Office does voter
5 registration. I have worked for the voter
6 registration department for eight years now at the
7 Harris County Tax Office. I was asked to come and
8 present to you-all today some cases of voter rarity or
9 voter registration fraud that we have presented to the
10 House in previous testimony. We have a sampling of it
11 to show you here today. I was asked by the new Tax
12 Assessor/Collector of Harris County, Leo Vasquez, who
13 was just appointed this last December the 23rd. So
14 he's only been in a couple of months, and he asked me
15 to give the, I guess, testimony today.

16 One of the things that Leo is real proud
17 of and really works on hard on our voter registration
18 staff is -- his goal for us is to have every citizen
19 that is eligible to vote registered. That is his
20 goal, and we are making all kinds of strides to make
21 that possible in voter registration. On the same
22 note, he also doesn't want any of these real, valid
23 voter registrations to be disenfranchised by someone
24 taking their vote. So the integrity of the voter roll
25 is also very important to us.

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1 The first case that I was going to lay
2 out is a case of voter fraud. It was committed by a
3 volunteer deputy, Janice Shelvin. Janice Shelvin was
4 a college student that became a volunteer deputy in
5 one of her college classes. And according to her
6 testimony, her professor asked her to do a voter
7 registration drive as part of her, I guess, class for
8 credit or some course. Ms. Shelvin unfortunately
9 procrastinated in her testimony and waited to the last
10 day and realized that she had to turn in quite a few
11 applications.

12 She then stated that she pulled out her
13 phone book and started filling in voter registration
14 cards. After 25 names she ran out of names in her
15 phone book and then proceeded on with the other 36,
16 making up names and filling them in. She turned this
17 in. I think several of her classmates were all
18 gathered into one bundle and were delivered to the
19 Harris County Tax Office to be registered.

20 It was the, I guess, observance or
21 diligence of one of our very good clerks as they were
22 processing these applications actually started to note
23 that these applications all had very similar
24 handwriting and were all used by the same pen. So
25 there was a red flag waived in her head that there's

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1 something amiss here and brought it to the attention
2 of her supervisor, where we then challenged these
3 applications because they did appear to be all signed
4 by the same person and written all in the same
5 penmanship. So there were 61 cases.

6 We, under the I guess Texas Election
7 Code, sent these voters a letter challenging these
8 applications thinking they were fraudulent. We got 25
9 replies from voters, and then the other 36 were -- no
10 reply was found. In fact, the post office were sent
11 certified mail as part of the documentation that
12 you-all received, and the post office said that there
13 was no residence there to deliver it to. So they were
14 returned. So I think that those were the fraudulent
15 ones.

16 This was sent to the Harris County
17 District Court, and Ms. Shelvin, I guess, pleaded
18 guilty to this offense and was convicted for 61 cases
19 of voter fraud. If -- and this was back in the year
20 2000. At that point in time as in the election code,
21 voter registration cards are accepted on face value.
22 When the voter signs the bottom, or the alleged voter,
23 when the alleged voter signs the cards, they are
24 accepted on face value until they are challenged. So
25 that's what happened to these.

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1 And if they were not caught by our clerk
2 that had the real judgment here, these people would
3 have become registered voters. We would have sent
4 them voter registration cards with the possibility of
5 someone collecting those cards and possibly voting
6 them in an early voting scenario or something like
7 that.

8 The second case I would like to present
9 is -- we refer to it as the Dashwood case. This
10 happened in 2006. We received 121 voter registration
11 applications. The resident address that they -- these
12 vultures were trying to use was a street called
13 Dashwood. There is a street in Houston called
14 Dashwood, but the address range that they were writing
15 on the voter registration card was nonexistent. There
16 isn't that address block on Dashwood.

17 And in our office, the procedures are
18 when our processors can't find it in the database, the
19 street database, a street range, they send it to our
20 mapping department who has all the plots and the plats
21 and all the new maps and everything, and they start
22 researching to find it. They found out that this
23 address of Dashwood is nonexistent and then really
24 quickly realized "Oh, boy, I have a whole bunch of
25 applications here all in this block range of

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1 Dashwood." And so we started looking at them and
2 found that, once again, they were similar penmanship,
3 the wide variations of the name, they switched the
4 first name, last name, they would turn the dates of
5 the birth date around. They had them all just jumbled
6 up trying to register a whole bunch of different
7 people that were fraudulent at this address on
8 Dashwood.

9 Thank goodness they didn't know Houston
10 that well to know that that was a nonexistent address,
11 or we never would have caught these for that. But the
12 only other characteristic they had was all these
13 applications were actually mailed from El Paso to us.
14 So whoever was doing it was mailing them from El Paso
15 here. And those were turned over to our D.A., and
16 they are still under investigation. I think they took
17 it to the D.A. in El Paso where they did have some
18 people that were questioned. I don't know what the
19 final outcome of that one was.

20 Then the last case I'd like to present
21 is we have 24 examples here of deceased -- people that
22 are deceased, and they voted after their date of
23 death. These are 24 examples that, once again, we had
24 a diligent clerk as we were going through and cleaning
25 up our voter roll, taking the social security death

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1 list and matching it to voters to send notices, that
2 she started to realize that some of these people had
3 voting history after their date of death on the social
4 security list. And some of these 24 people voted
5 numerous times here.

6 I can tell you that these were
7 registered voters in Harris County, and they are now
8 deceased, and they do have a voting history. Our
9 County Clerk keeps our voting history records, and the
10 County Clerk has voting history for these people in
11 elections that were past their date of death.

12 In this documentation, you will see that
13 we have a complete voter file for each one of these
14 voters. It's their voter registration application,
15 how they get registered, if they had any changes of
16 address. It will have a front cover page that has the
17 computer screen shot of that voter's record in our
18 office, and then also on the bottom corner it will
19 show what elections they voted in and the date of
20 those elections. And then on the last page is a
21 notice from the social security department of their
22 date of death, and you can go through these, and
23 you-all can get the documents and look at them.

24 Several of these voters voted early in
25 person during early election. We had a couple of them

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1 on election day and a couple by ballot by mail. The
2 majority of them were done early in person in early
3 voting.

4 And I know it's getting late, and so
5 I'll stop with this fine set of documents.

6 **QUESTIONS FROM SENATE FLOOR**

7 SEN. DUNCAN: The Chair recognizes
8 Sen. Huffman.

9 SEN. HUFFMAN: Mr. Johnson, thanks for
10 staying with us so late.

11 MR. JOHNSON: You bet.

12 SEN. HUFFMAN: I appreciate it. I want
13 you to go over again that last group that you were
14 talking about to make sure that it's clear. I'm not
15 sure that it was. As I understood your testimony,
16 you've established that, in fact, that last group
17 of 24, at least some of those people, or someone,
18 actually cast a ballot in Harris County after it was
19 determined that they were dead. Is that correct?

20 MR. JOHNSON: That is correct.

21 SEN. HUFFMAN: Okay. And what are the
22 numbers? How many of those were you able to
23 establish?

24 MR. JOHNSON: Well, we have proof here
25 that 24 -- and this is just a random, you know,

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1 sampling that we found -- 24 of these people are
2 deceased, were registered voters in Harris County they
3 are deceased now, and they had voting history after
4 their date of death on the social security list.

5 SEN. HUFFMAN: And how was it that you
6 came to investigate that particular group of people?

7 MR. JOHNSON: This is something that we
8 routinely do. Almost on a daily basis now in our
9 office we get probate court records and go through
10 them to find if any of those people were registered
11 voters to remove them from the voter roll. Right now
12 what we're working on is we get notes in poll books,
13 family members will write notes in poll books, you
14 know, this was my husband or wife and is deceased, and
15 we go through these, we mail these people letters
16 asking them to confirm this information.

17 And this particular project we actually
18 purchased a copy of the social security death database
19 and started comparing our voter roll to it to see if
20 we had any matches to clean our voter roll up.

21 SEN. HUFFMAN: Is that a procedure
22 that's required by the Secretary of State, or is that
23 something that Harris County has taken on?

24 MR. JOHNSON: That's something that
25 Harris County took on as an attempt to, like I said,

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1 make a clean and accurate voter roll. It actually
2 cost our department quite a bit of money to make that
3 purchase and to do that work.

4 SEN. HUFFMAN: And is that a cost that
5 Harris County has taken on itself?

6 MR. JOHNSON: Yes.

7 SEN. HUFFMAN: Do you have knowledge as
8 to whether or not there are other counties in the
9 state that are taking this additional obligation on?

10 MR. JOHNSON: Yes, in fact -- yes, there
11 are other counties that take this on. In fact this
12 particular run here, we did this in partnership with
13 Tarrant County at the time.

14 SEN. HUFFMAN: Okay. Do you know
15 whether or not all the other counties in the State of
16 Texas are participating in this?

17 MR. JOHNSON: No, I do not know if all
18 the other counties in the State of Texas are.

19 SEN. HUFFMAN: Okay. Do you believe
20 that there could be some counties that are not purging
21 their rolls of deceased individuals?

22 MR. JOHNSON: I would believe that
23 that's very possible.

24 SEN. HUFFMAN: Okay. I want to go
25 through something with you because I think you've

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1 established through some of the cases that you've
2 brought to us and the investigations that have been
3 done that there are, in fact, people being registered
4 in Harris County who -- in some fraudulent manner.
5 But let's take an example, and I'm going to ask you
6 about a situation where an individual would fill out
7 the -- a Texas Voter Registration Application. This
8 is just a form that is provided by the Secretary of
9 State. Is that correct?

10 MR. JOHNSON: Yes.

11 SEN. HUFFMAN: And do you have one of
12 those forms in front of you?

13 MR. JOHNSON: I have several copies.
14 Would you like for --

15 SEN. HUFFMAN: Okay. All right. If you
16 could just make those available? And if anyone who
17 would like to look at this, we'll provide you a copy.
18 And these are the original ones. Actually you brought
19 a stack from Harris County. Is that correct?

20 SEN. DUNCAN: Senator, do you want to
21 put these in the record?

22 MR. JOHNSON: These were actually
23 produced by the Secretary of State's Office.

24 SEN. HUFFMAN: Yes? Yes, sir? Yes,
25 Mr. Chair?

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1 SEN. DUNCAN: Do you want to put that in
2 the record?

3 SEN. HUFFMAN: Yes, could we put this in
4 the record and mark it as an exhibit? I don't know
5 what number we're on.

6 SEN. DUNCAN: It will be Exhibit No. 34,
7 and describe it, if you would.

8 (Exhibit No. 34 marked)

9 SEN. HUFFMAN: Yes, it is a Texas Voter
10 Registration Application. This is one that is
11 particularly from Harris County, but it's -- I believe
12 it would be produced by the Secretary of State. Is
13 that -- is that correct, Mr. Johnson?

14 MR. JOHNSON: Yeah, these are produced
15 by the Secretary of State, and they can be used in any
16 county across the State of Texas.

17 SEN. HUFFMAN: All right.

18 SEN. DUNCAN: It will be -- it will be
19 received in the record.

20 (Exhibit No 34 admitted)

21 SEN. HUFFMAN: All right. Thank you,
22 sir.

23 Just to see how this process would work,
24 let's just pretend that -- let's pretend that I'm
25 Elvis Presley. Okay? And let's say I fill out this

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1 Texas Voter Registration Application and I mark -- and
2 there's a place at the bottom that provides space to
3 present a Texas driver's license number and a social
4 security number. Is that correct?

5 MR. JOHNSON: Yeah, that's Step No. 9.
6 Let me have my glasses -- let me put my glasses on.

7 SEN. HUFFMAN: All right.

8 MR. JOHNSON: Or 8 -- that's 8.

9 SEN. HUFFMAN: That's No. 8.

10 MR. JOHNSON: Sorry.

11 SEN. HUFFMAN: And at the bottom of
12 No. 8 is an option "Check if you do not have a Texas
13 driver's license or Texas personal identification
14 number," and then next to it is "Check if you do not
15 have a social security number." So let's say I do not
16 have either one of those, either one, do not have a
17 TDL or an ID card, nor do I have a social security
18 number. So I check both, I sign it and I mail it off.
19 Where does it go? Does it go to your office?

20 MR. JOHNSON: Yes.

21 SEN. HUFFMAN: And then what would
22 happen when it arrived at your office with that
23 information from me asking to register to vote?

24 MR. JOHNSON: The first thing when one
25 of these applications comes into our office, we check

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1 it for what the date is on it because if you mailed
2 it, it becomes effective 30 days from the date it was
3 postmarked or the date we receive it from a volunteer
4 deputy or some other government agent. We check it
5 for completeness, make sure all the boxes are filled
6 in. If the application is not complete, we'll mail
7 them a letter of incomplete and ask -- with another
8 application in it and ask them to try again and make
9 sure they fill all the required boxes out.

10 In the scenario you were talking about,
11 if you checked the box that said "I do not have a
12 Texas driver's license" and you checked the box that
13 said "I do not have a social security number," under
14 the Help America Vote Act, the Secretary of State is
15 supposed to provide a unique ID number for this voter,
16 and they do. They provide a state voter ID number,
17 and this person becomes registered.

18 SEN. HUFFMAN: Okay. So that is
19 happening, and that is the law in the State of Texas
20 at this point. Is that correct?

21 MR. JOHNSON: Correct.

22 SEN. HUFFMAN: Okay. Once they provide
23 that unique ID number, then what would happen?

24 MR. JOHNSON: Well, then we mail them a
25 voter certificate card.

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1 SEN. HUFFMAN: Okay. What form of
2 identification would they then need to vote with that
3 voter registration card?

4 MR. JOHNSON: In this particular
5 example, you are marked on the poll book. When we
6 print the poll book or the list of registered voters
7 for an election, you would be marked as not being ID
8 compliant because you haven't shown ID to who you are.
9 And in the state law, what it states there is that you
10 can use any one of the currently prescribed IDs with
11 the exception of the voter registration card. I have
12 the list here. You know, you can use your driver's
13 license. Most people do something like that. You can
14 use, you know, birth certificate, citizenship papers,
15 you know, a passport. The one that I find real
16 interesting is you can use a letter, an official
17 letter mailed from a government entity. So if I had
18 mailed them a letter saying that they hadn't had a
19 complete application to try again, that is a letter
20 from a government entity, and they could use it
21 for proof.

22 SEN. HUFFMAN: So if I had no other form
23 of ID, I could use the letter that you had sent to me
24 as meeting the requirements under 63.0101 described as
25 official mail addressed to the person by name from a

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1 governmental entity. Is that correct?

2 MR. JOHNSON: That is correct. That is
3 an acceptable form of ID.

4 SEN. HUFFMAN: Okay. So a person who
5 wanted to commit fraud could, in fact, send in
6 applications -- is that correct -- using false names
7 as long as they had an address where they could
8 receive mail, go through this dance with the Secretary
9 of State and the tax assessors and get voter
10 registration cards along with letters from your
11 office, and they could use those things to get
12 individuals to go in to the poll to vote, and it would
13 be virtually impossible under the current state of the
14 law for them to be detected. Is that correct?

15 MR. JOHNSON: Correct. The election
16 judge could not deny them the right to vote. They are
17 on the poll book. They are listed as a registered
18 voter. They have shown one of the acceptable forms of
19 ID, and they would be allowed to vote on election day.

20 SEN. HUFFMAN: Okay. So that's just one
21 way that voter fraud can be committed in the State of
22 Texas under the current law, and no one would know
23 actually that it was going on probably other than the
24 individuals involved with the committing the offense.
25 Is that correct?

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1 MR. JOHNSON: That is correct.

2 SEN. HUFFMAN: All right. One of the
3 other records that you provided to us was the young
4 woman, I believe, who was registering people for a
5 school project. I think you indicated that she as
6 well managed to successfully register some individuals
7 who you believed were nonexistent individuals. Is
8 that correct?

9 MR. JOHNSON: No, she was never able to
10 register anybody.

11 SEN. HUFFMAN: All right.

12 MR. JOHNSON: We caught them before.
13 Like I said, the clerk that was working these
14 applications noticed this pattern before we mailed any
15 voter registration certificates out, and we were able
16 to stop them and challenge these voters. But we had
17 officially accepted the applications and noticed
18 everything being complete, and they were in the
19 process of being registered.

20 SEN. HUFFMAN: All right. What is your
21 experience as you find cases that you believe are
22 cases of voter fraud and you bring them to the
23 District Attorney's Office? Has it been your
24 experience that those cases had been difficult to
25 prosecute?

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1 MR. JOHNSON: Yes, we have turned quite
2 a few cases over to the District Attorney, and I will
3 tell you our District Attorney has made attempts to
4 prosecute this, going back to one of our long-time
5 District Attorneys Johnny Holmes. And he basically
6 said that there is not the tools in the election law
7 to prosecute a voter. Basically in order to get voter
8 fraud prosecuted, you have to have that person
9 committing the offense confess to that offense for
10 prosecution.

11 One of the things they always state was
12 because -- just a signature on the poll book is not
13 really enough evidence for them so far to get a
14 conviction, that if we ever had some other form of ID
15 that they contend it was a harder match, you could
16 actually have successful convictions probably on some
17 of these voter fraud issues.

18 SEN. HUFFMAN: Isn't it true that the
19 current state of the law does not facilitate proof
20 that a particular person cast a ballot? Is that -- is
21 that a fair statement?

22 MR. JOHNSON: Yes.

23 SEN. HUFFMAN: Do you think that the
24 current Public Integrity Division of the Harris County
25 District Attorney's Office is meeting the same

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1 problems that were met, as you mentioned, back in
2 Johnny Holmes' days?

3 MR. JOHNSON: Correct.

4 SEN. HUFFMAN: All right.

5 MR. JOHNSON: There was a recent case
6 that I just saw pending on a Website. We had an open
7 record request for -- right before this last
8 November 2008 election from Texas Watchdog. They sent
9 us a list of over 4,000 voters that they believed to
10 be deceased. This was information that they found
11 from the social security death list. We are currently
12 working that list trying to, you know, find out if
13 they are deceased or not, and several of them we have
14 removed from the rolls.

15 Texas Watchdog also gave that same list
16 to one of our local news stations, Channel 2 in
17 Houston. Channel 2 did an investigation and actually
18 found two of the voters on that list as being deceased
19 and voting during the Primary, and that was after they
20 had passed away. They actually placed a vote in the
21 Primary, and they had interviews with the family
22 members showing the death certificates and everything.
23 And the family members were really upset about this,
24 that someone would steal or fraud their deceased
25 relative's name.

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1 Watchdog actually turned these over to
2 the District Attorney's Office, these cases, and they
3 were unable to -- the District Attorney had to put a
4 comment back they were unable to get any prosecution
5 on these cases because they didn't have anyone to
6 prosecute nor anyone to confess to the crime.

7 SEN. HUFFMAN: All right. So each one
8 of these cases is actually pretty much a "Who done
9 it?" Is that correct?

10 MR. JOHNSON: That is correct.

11 SEN. HUFFMAN: And just like any other
12 criminal case, the State of Texas has to prove these
13 cases beyond a reasonable doubt. Is that correct?

14 MR. JOHNSON: I believe that is correct.

15 SEN. HUFFMAN: So they have to prove
16 identity, they have to prove intent, they have to
17 prove the elements of the offense. And many times
18 they're confronted with a situation where they just
19 don't have any way to prove it. Is that correct?

20 MR. JOHNSON: That's what I have been
21 told.

22 SEN. HUFFMAN: All right. Do you think
23 that just because -- you know, we've had a lot of talk
24 today about the fact that there's just -- there's no
25 evidence that there's any kind of voter fraud or voter

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1 impersonation going on because if there -- if it was
2 happening, then there would be all these convicted
3 cases out there. Do you think that because it is so
4 difficult to prove these cases and because the law
5 does not facilitate the proof, that that may be one of
6 the reasons why there aren't a lot of convictions that
7 have been shown through the records? Would you agree
8 with that?

9 MR. JOHNSON: Yes. I will say that the
10 Texas Election Code does not give us the tools to
11 really do the job that we're, you know, trying to do,
12 even the D.A.'s Office. It's very difficult to get
13 prosecution in these cases.

14 SEN. HUFFMAN: All right. Would it
15 surprise you to know that this -- well, in the General
16 Election in November of '04 that the Harris County
17 District Attorney's Office received 3,324 electric
18 fraud complaints for that one election, or that for
19 the Primary Election in March of '08 that they
20 received 1,502 complaints of election fraud that came
21 in as -- I would assume slightly -- during the
22 election and probably for a couple of days thereafter?
23 Do those numbers surprise you?

24 MR. JOHNSON: No, they do not.

25 SEN. HUFFMAN: As the election is taking

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1 place, does your office along with the D.A.'s Office
2 and Beverly Kaufman's Office monitor the situations
3 that are going on, try to field phone calls and
4 receive complaints of election fraud violations?

5 MR. JOHNSON: Well, I can speak for our
6 office, the tax office. We're actually by election
7 code obligated to review the poll book and all the
8 documents from the election after the election has
9 taken place, to validate that everybody that was
10 marked as voting were registered voters. If we find
11 someone that had been written into the poll book and
12 wasn't a registered voter and allowed to vote, we're,
13 by the Texas Election Code, supposed to turn those
14 names over to the District Attorney, and we do that
15 after every election, and, you know, they do their
16 best in trying to work this. And I know Beverly
17 Kaufman's Office, who runs the election, has the same
18 responsibilities for any voter fraud that goes on.
19 They compile a report after every election and submit
20 it to the D.A.'s Office.

21 SEN. HUFFMAN: Just a couple of more
22 quick questions, Mr. Johnson. Based on your
23 experience, your years at the Tax Assessor's Office
24 and working on these issues all these years, do you
25 believe -- in your opinion, do you believe that there

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1 is a voter fraud problem in Harris County?

2 MR. JOHNSON: I will tell you there is
3 voter fraud in Harris County. We have one of the few
4 convicted cases of it. We have examples here. I
5 can't tell you how extensive it is. We have never
6 done a voter fraud study on our voter roll. The cases
7 that I presented to you here today were just found due
8 to workers, clerks in our office being diligent and
9 accidentally stumbling across these records to
10 discover them.

11 SEN. HUFFMAN: Does current law actually
12 make it difficult to assess the scope of the problem?

13 MR. JOHNSON: Yes. The current election
14 law is very loose and makes it very difficult to --
15 doesn't give us the tools to do the types of
16 investigations needed for these projects.

17 SEN. HUFFMAN: All right. Thank you
18 very much, Mr. Johnson. And thank you, Members, for
19 bearing with me. Thank you, Mr. Chairman.

20 SEN. DUNCAN: Thank you Senator.
21 Members, we've been going for over two hours, and we
22 need to give our court reporter an at ease. So we'll
23 be at ease for ten minutes. That will be until 2:35.

24 (Recess: 2:25 a.m. to 2:38 a.m.)

25 SEN. DUNCAN: The Committee of the Whole

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1 will come back to order. Sen. Gallegos, did you want
2 to yield to Sen. West?

3 (No response heard)

4 SEN. DUNCAN: Sen. West?

5 SEN. WEST: Thank you, Mr. Chairman.

6 Mr. Johnson --

7 SEN. DUNCAN: If we could have order,
8 please. Go ahead, sir.

9 SEN. WEST: It's Mr. Johnson. Is that
10 correct?

11 MR. JOHNSON: Yes.

12 SEN. WEST: Okay. I'm sorry. Your
13 position there in Harris is --

14 MR. JOHNSON: I'm sorry I didn't say
15 that earlier. I'm the Associate Director of Voter
16 Registration in Harris County.

17 SEN. WEST: Okay. Is it true that at
18 least 13,000 timely voter registration applications
19 had not been processed when early voting began in
20 Harris County during the fall of 2008 elections, and
21 that many of them were not processed before early
22 voting concluded?

23 MR. JOHNSON: I do not have those
24 figures, you know, right off the top of my head. I
25 could find those answers out for you, but I can't --

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1 SEN. WEST: But let me ask it this way:
2 Was there a substantial number of voter registration
3 applications not processed during that particular time
4 period?

5 MR. JOHNSON: You know, that's -- you
6 have to define "a substantial number." We received
7 about 120,000 voter registration applications the
8 day -- the day of and day after the cutoff. By the
9 start of early voting, we had probably 95 percent of
10 those worked. And by the time we got to election day,
11 all of them were complete.

12 SEN. WEST: So you did have a backlog
13 prior to the start of early voting? You only had --
14 I'm sorry. You had only completed about 95 percent of
15 the voter registration applications at the time that
16 early voting started?

17 MR. JOHNSON: Correct.

18 SEN. WEST: Okay. Do you know that
19 Harris County disqualified nearly 70,000 voter
20 registration applications that were received in time
21 for the 2008 election? Do you know that?

22 MR. JOHNSON: No, I do not know that.

23 SEN. WEST: Were a substantial number of
24 people disqualified?

25 MR. JOHNSON: I do not -- you know, you

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1 have to define what is "disqualified." What's your
2 definition of "disqualified"?

3 SEN. WEST: Seventy thousand. You know,
4 in terms -- were there --

5 MR. JOHNSON: Are you talking about we
6 received 70,000 applications that were incomplete, or
7 are you telling me that we didn't --

8 SEN. WEST: You disqualified.

9 MR. JOHNSON: -- register and rejected
10 70,000 applications? There's a big difference between
11 the two.

12 SEN. WEST: Did you know that Harris
13 County disqualified nearly 70,000 voter registration
14 applications that were received in time for the 2008
15 election?

16 MR. JOHNSON: I will tell you we had
17 quite a few applications that were not completed
18 correctly, and we mailed those people letters, the
19 letter with a new application, and they had ten days
20 to reply, and they received the original date of the
21 first application, which still made them qualify.

22 SEN. WEST: So there's a process?

23 MR. JOHNSON: Yes, there's a process.

24 SEN. WEST: Okay. All right. Now, did
25 you know that Harris County Election Officials have

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1 acknowledged that in many polling locations in Harris
2 County when voters were in line to vote at
3 seven o'clock and had the right to cast a ballot, that
4 they were routinely given provisional ballots rather
5 than standard ballots?

6 MR. JOHNSON: That unfortunately is not
7 my department. You would have to ask the County Clerk
8 about that. The tax office just handles voter
9 registration.

10 SEN. WEST: Okay. But you have
11 processes in place in your office to handle different
12 types of election-related issues?

13 MR. JOHNSON: Yes. On election day for
14 that scenario you were just talking about, we had over
15 240 people on the phone, and we actually answered
16 close to almost 60,000 -- I guess 55,000 phone calls
17 on election day, helping people find their polling
18 locations, helping the election judge qualify voters
19 they were having problems with.

20 SEN. WEST: In terms of -- my colleague
21 Senator Huffman went methodically through the voter
22 registration application card, and I assume that you
23 have processes in place there to verify all the
24 information necessary to determine whether or not a
25 person should be issued a voter -- voting registration

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1 certificate?

2 MR. JOHNSON: We follow the Texas
3 Secretary of State -- I mean, the Texas state law on
4 elections.

5 SEN. WEST: But you do have processes in
6 place in order to --

7 MR. JOHNSON: Yes. We have manuals that
8 we have for all of our employees on the processes to,
9 you know, handle voter registration applications.

10 SEN. WEST: All right. In terms of the
11 handling of these applications, are individuals given
12 certain specific duties as it relates to the
13 applications, or do they just kind of look at the
14 application, you have individuals looking at
15 application after application?

16 MR. JOHNSON: With the volume that we
17 handle, yes, you know, the assembly line method is
18 proven to be the most efficient for handling high
19 volumes, you know, in a quick manner. So, yes, we
20 have different departments that do different tasks in
21 each one. And the very first step when we receive an
22 application is it is validated to make sure it is
23 complete. And then after it's completed, even after
24 that, they put a document number on it and image it,
25 and that is cataloged in our voter registration system

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1 even on the incomplete ones so we can refer back at
2 any point in time and find out if a voter submitted a
3 complete or incomplete. But that is the very first
4 step when they come through the door of our office.

5 SEN. WEST: Is there a statutory duty
6 imposed by Texas law to go through and purge the voter
7 registration rolls of persons that are deceased?

8 MR. JOHNSON: If you're referring to --
9 and the definition of "purge" in the Texas Election
10 Code is by the National Voter Registration Act when
11 you have reached the end of your suspense cycle.

12 SEN. WEST: Explain "suspense."

13 MR. JOHNSON: Okay. I'll start at the
14 beginning on the definition of "purge" in the election
15 code.

16 SEN. WEST: Okay.

17 MR. JOHNSON: If every two years we
18 mail -- and this is where the majority of people end
19 up on suspense. Every two years we mail every voter,
20 registered voter, a new voter registration certificate
21 or renewal certificate, the card that you get in the
22 mail. If that card -- and it has instructions on that
23 card. If the postman cannot deliver it, if the
24 resident no longer lives at that address they're
25 trying to mail it to, then the post office is

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1 instructed to return it to our office as being
2 undeliverable.

3 When your voter registration card is
4 returned to our office as being undeliverable, that
5 you no longer live at that address, we put you on
6 what's called "suspense." You're still a registered
7 voter. You can still vote. When you walk into a
8 polling location, you're on the poll book, you're
9 going to have an "s" by your name, which stands for
10 "suspense." And the election judge will ask you,
11 "Sir, would you please fill out a statement of
12 residence?" An address correction card is basically
13 what that is with your new address. Once you fill out
14 that card or any other voter application, your name is
15 removed off suspense.

16 By the National Voter Registration Act,
17 once you go on suspense and you remain on suspense
18 without updating your address, without filling out a
19 change of address card or application for two General
20 Election cycles, you are then removed from the voter
21 roll.

22 SEN. WEST: Okay. Thank you. As it
23 relates to checks and balances, do you have checks and
24 balances in your office?

25 MR. JOHNSON: Yes, we do.

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1 SEN. WEST: Describe those checks and
2 balances.

3 MR. JOHNSON: I mean, are you asking me
4 what the procedure is that I'm checking and balancing?

5 SEN. WEST: Of the registration cards.

6 MR. JOHNSON: We probably have the most
7 robust in the state. And the fact that every document
8 that comes through our door, the very first thing that
9 happens to it is I give it a document number and I
10 image it, and then it is logged into our computer
11 system, and I can find that document at any point in
12 time. So I have a count of how many documents I
13 receive.

14 As the processors are working these
15 documents, it records all the steps that happened to
16 it throughout the way and will finally record when it
17 is completed and the person is registered or they have
18 been sent some notice of incomplete. I can run a
19 report at any time and find out how many applications
20 I have and what status.

21 SEN. WEST: Okay. As it relates to --
22 you have several -- I think you have about three
23 different exhibits up there, and I'll refer to them
24 that way. One of them you have -- I think it's 121
25 applications.

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1 MR. JOHNSON: Yeah, we referred to that
2 as the Dashwood.

3 SEN. WEST: Dashwood, okay. Let's talk
4 Dashwood.

5 MR. JOHNSON: Okay.

6 SEN. WEST: Did the system -- did your
7 system work in terms of the Dashwood applications?
8 And what I mean by that --

9 MR. JOHNSON: Yes, it did.

10 SEN. WEST: What I mean by that -- hold
11 on for one second. And what I mean by that when those
12 applications came in, I assume that you assigned them
13 a number, you imaged them and then sent them through
14 the process to determine whether they were complete?

15 MR. JOHNSON: Yes. One of the hearts of
16 any voter registration system is what we call the
17 street guide, the list of streets broken into what
18 streets and block ranges belong to a precinct.
19 Because in order to register a voter, you have to
20 assign them to some precinct so they receive the
21 correct ballot, so they're voting for the correct
22 districts and correct members, you know.

23 SEN. WEST: And that would be one of
24 the, I guess, checks so to speak?

25 MR. JOHNSON: Correct.

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1 SEN. WEST: All right.

2 MR. JOHNSON: So that is the heart of
3 any voter registration system is the street guide.

4 These particular -- these particular
5 addresses or cards when they came in, the processor
6 could not find this -- these streets, these addresses
7 in our master list of addresses. Now, we get new
8 streets all the time, so that's why we have a whole
9 separate mapping department. These applications were
10 sent to our mapping department so that they could do
11 research to find this address. They did extensive
12 research, actually drove to the street to look it up
13 and found that this block range of that street did not
14 exist.

15 SEN. WEST: Okay. And were all of the
16 applications properly filled out?

17 MR. JOHNSON: Not all of them were
18 properly filled out.

19 SEN. WEST: In fact the majority of them
20 were not properly filled out. Is that correct?

21 MR. JOHNSON: I have not done a count on
22 it. I would say, you know, a good percentage of them
23 were not properly filled out.

24 SEN. WEST: Okay. So in that instance,
25 the system worked?

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1 MR. JOHNSON: Yes.

2 SEN. WEST: Okay. And so the process
3 worked, and you were able to stop those particular
4 applications from being processed.

5 As it relates to the issues where we had
6 people that were voting that were deceased, can you
7 tell us whether or not -- you can't tell us whether --
8 how those persons appeared, whether they went to the
9 polling place, anything like that. Your records just
10 indicate that someone voted. Is that correct?

11 MR. JOHNSON: No. Now, the voting
12 information actually comes from our County Clerk's
13 Office.

14 SEN. WEST: Okay.

15 MR. JOHNSON: They are in charge of
16 elections, but it does appear on our computer system.
17 We did a screen shot of those in these records. So if
18 you want to -- I mean, I can go through the first one.

19 SEN. WEST: I mean, just a question.
20 Can you tell us whether --

21 MR. JOHNSON: Yes, and let me just
22 describe the code for any of you-all that have it.

23 SEN. WEST: Well, hold on; hold on for
24 one second because I just want to know whether you can
25 tell us whether or not they voted at the -- someone

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1 voted at the poll.

2 MR. JOHNSON: Yes, we have a code.

3 SEN. WENTWORTH: Okay. Now, let me --

4 MR. JOHNSON: In the very first
5 column -- let me tell you something.

6 SEN. WEST: Hold on for a second; hold
7 on for a second, please. You can tell us that.
8 That's all I wanted to know.

9 MR. JOHNSON: Okay.

10 SEN. WEST: Now, as it relates to your
11 office's responsibility for doing any type of check --
12 well, let me back up.

13 Does your office have a process that you
14 utilize on a regular basis to check the probate --
15 check the probate court, anything like that, or check
16 any type of records to determine whether persons on
17 the voter roll are now deceased?

18 MR. JOHNSON: Correct.

19 SEN. WEST: How often -- you do have a
20 process?

21 MR. JOHNSON: We have several processes.

22 SEN. WEST: Okay.

23 MR. JOHNSON: And to start with the --
24 you asked first about the probate. Probate courts
25 are, in the Texas Election Code, required to send us

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1 their cases that they process.

2 SEN. WEST: Okay.

3 MR. JOHNSON: We receive that
4 documentation probably once a week from the probate
5 courts.

6 SEN. WEST: Once a week?

7 MR. JOHNSON: Yeah, I would say roughly,
8 from Harris County.

9 Then our office takes this upon
10 ourself -- because I will tell you it's probably one
11 of the things that's most upsetting to a voter is when
12 they come in and see their deceased familiar member on
13 the roll. It's really upsetting. So we actually go
14 through the Houston newspaper every day and cut out --

15 SEN. WEST: Every day?

16 MR. JOHNSON: Every day.

17 SEN. WEST: Okay.

18 MR. JOHNSON: -- and cut out the copies
19 of the obituaries to check for those people to see if
20 they're registered, to remove them.

21 And then the final way that this happens
22 is actually through the Secretary of State's Office.
23 They are really now the voter registrar for the State.
24 They received from -- I believe it's the health
25 department, the list on -- I don't know if it's weekly

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1 or monthly basis, but some basis they receive the
2 records from the health department of the people that
3 have passed away, and they pass that through the
4 statewide system and send us notification.

5 SEN. WEST: Let me ask you something.
6 Is that the three methods that you utilized, the
7 Secretary of State --

8 MR. JOHNSON: Yeah.

9 SEN. WEST: -- the obituaries and also
10 the probate records, court records?

11 MR. JOHNSON: Yeah. Then the other one
12 that I found that is currently not being recorded that
13 we do periodically is we also go get the
14 secretary's -- I mean not the Secretary's -- the
15 Social Security Administration's death list.
16 Unfortunately our Texas Secretary of State just
17 receives death notices from the State of Texas.

18 SEN. WEST: How long --

19 MR. JOHNSON: So if you pass from
20 outside the state, you would not be on that list.

21 SEN. WEST: How long has that process or
22 those processes been in place?

23 MR. JOHNSON: They had been in place --
24 Help America Vote went into place in what, 2004. They
25 probably didn't get the computer system implemented

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1 until 2006.

2 SEN. WEST: Until 2006?

3 MR. JOHNSON: Yes.

4 SEN. WEST: And so when you look at
5 the -- those persons that -- quote-unquote that are
6 dead and someone else is voting, how far back does
7 that go?

8 MR. JOHNSON: I believe most of these
9 people were canceled in the year 2000.

10 SEN. WEST: I'm sorry?

11 MR. JOHNSON: I believe most of the
12 people on this list were canceled in the year 2000.

13 SEN. WEST: They were canceled? When
14 you say "canceled," they were purged from your roll?

15 MR. JOHNSON: Yes. Well, a purge is for
16 suspense voters.

17 SEN. WEST: Okay. What I --

18 MR. JOHNSON: Cancellations are for --
19 you know, if they are a deceased, felon, noncitizen --

20 (Simultaneous discussion)

21 SEN. WEST: Okay. So they were canceled
22 using the process or at least part of the process you
23 just mentioned?

24 MR. JOHNSON: Yes.

25 SEN. WEST: And part of it had not been

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1 implemented by that time, probably 2005, but at least
2 maybe the Secretary of State going through the
3 obituaries was utilized for purposes of canceling
4 those individuals?

5 MR. JOHNSON: You know, since I have
6 been working in our office, we have -- we have done
7 all four of those activities before -- before TEAM
8 came into place where the state was in charge of it.
9 We used to get records on about a monthly, quarterly
10 basis from the health department that we would run
11 against our voter roll, too. We requested those
12 records, and we'd run them against our voter rolls to
13 try to clean them up, but that was basically
14 implemented in about the year 2000 when
15 Mr. Bettencourt became the Tax Collector/Assessor.

16 SEN. WEST: Would it be a fair statement
17 that -- say that at least as it relates to those two
18 that Dashwood and those persons that have been
19 canceled that there were processes in place in your
20 office that enabled you, "you" being the office
21 generically, to find those individuals -- find out
22 those applications and then turn around and deal with
23 them?

24 MR. JOHNSON: Well, we found these
25 cases.

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1 SEN. WEST: Okay.

2 MR. JOHNSON: And we found these cases,
3 you know, I believe just by the due diligence of a
4 good processor.

5 SEN. WEST: Okay. But you --

6 MR. JOHNSON: I think this is probably
7 the tip of the iceberg --

8 SEN. WEST: Okay.

9 MR. JOHNSON: -- because we're not out
10 looking for these cases. They were just ones we came
11 across.

12 SEN. WEST: Okay. But the reality is
13 that if someone submits a voter registration
14 application that's not filled out correctly, that goes
15 into a pile?

16 MR. JOHNSON: Well, that day we actually
17 generate a letter out of our system, a letter of
18 incomplete --

19 SEN. WEST: Okay. But I mean --

20 MR. JOHNSON: -- and we mail it to the
21 voter.

22 SEN. WEST: But if you have an
23 application that's not complete --

24 MR. JOHNSON: That's correct.

25 SEN. WEST: -- you will not issue any

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1 type of voter registration card. Right?

2 MR. JOHNSON: That is correct.

3 SEN. WEST: Okay. You have a process in
4 place that you can cancel out persons that are
5 deceased also. Is that correct?

6 MR. JOHNSON: That is correct.

7 SEN. WEST: All right. And so you have
8 obviously competent individuals working these
9 processes because otherwise you wouldn't have them in
10 your office. Now, so there are processes in place as
11 it relates to those two?

12 MR. JOHNSON: That is correct.

13 SEN. WEST: Okay. Now, as it relates to
14 the young lady that was -- received deferred
15 adjudication, she wasn't convicted, she received
16 deferred adjudication --

17 MR. JOHNSON: Okay.

18 SEN. WEST: -- what type of case was
19 that? I me, what actually did your records show to
20 lead you to believe she had done something?

21 MR. JOHNSON: What made us discover the
22 case?

23 SEN. WEST: Yeah, what made you think
24 that there was some fraud going on?

25 MR. JOHNSON: Like I said, a

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1 processor --

2 SEN. WEST: Okay.

3 MR. JOHNSON: -- one of the ladies that
4 actually keys in all the information into our computer
5 system from the cards, received -- went over to the
6 tray to be worked, picked up this pile. And as she's
7 flipping through these cards processing them, she
8 noticed right off the bat that these were all the same
9 handwriting. You know, when you're looking at card
10 after card --

11 SEN. WEST: Okay.

12 MR. JOHNSON: -- you notice that it's
13 the same handwriting. In fact it was the same pen.
14 You know, normally when you pick up a stack of cards,
15 one would be blue, one would be black --

16 SEN. WEST: Sure.

17 MR. JOHNSON: -- you get purple, pastel,
18 all kinds of colors. Now, they were all the exact
19 same pen. You know, 60 of them in a row, the same
20 writing, same pen, it sends off a red flag.

21 SEN. WEST: Okay. And I agree with you
22 on that. And so again, the process was able to pick
23 that up?

24 MR. JOHNSON: Correct.

25 SEN. WEST: Okay. All right. Now, you

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1 would agree with me -- you may agree with me, I'll put
2 it like that -- that you have processes in place in
3 order to make certain that you don't certify or
4 provide a voter registration card for someone that
5 doesn't complete the application appropriately; that
6 you have a process in place to cancel out individuals
7 that are deceased; and you have competent individuals
8 working within your establishment to -- if they see
9 instances of what they believe rises to the level of
10 voter fraud, that they take those cards out and review
11 them or investigate them. Is that correct?

12 MR. JOHNSON: We have processes to try
13 to catch, you know, voter registration fraud when it
14 comes through. I will tell you the election code is
15 written real loosely and doesn't give us the proper
16 tools to do this job, I would say, in the best manner
17 it could be done.

18 SEN. WEST: Okay. Let's -- you said
19 "the tools." What tools would you need?

20 MR. JOHNSON: Well, this one -- one that
21 was just brought up here for an example, that you can
22 take our current voter registration application, write
23 any name you want to on here, check the boxes that you
24 don't have a driver's license or a citizenship,
25 there's no validation check at all. All I'm looking

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1 for is did you fill in every box on here, and you're
2 registered to vote. And there's nothing -- there's no
3 tools, there's nothing in the law that allows me to
4 validate this. There's no list to validate it against
5 that this is a real person. So I consider that kind
6 of a hole in the -- in the system.

7 SEN. WEST: Now, would you agree or
8 disagree that most states have the same process,
9 though?

10 MR. JOHNSON: I'm not real familiar
11 with all states' laws. I do know that all state laws
12 have to comply with the National Voter Registration
13 Act and Help America Vote.

14 SEN. WEST: Does this particular voter
15 registration card comply with that act?

16 MR. JOHNSON: It does comply with that
17 act, but I will tell you there are a lot of different
18 voter registration cards. I do see other states'
19 applications because they can mail them to me. You do
20 not have -- in Texas you do not have to use this
21 official card to register. As long as you have the
22 information that's required to register written on a
23 piece of paper, we can use it as a voter registration
24 card.

25 SEN. WEST: But it does comply with the

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1 national act?

2 MR. JOHNSON: This does.

3 SEN. WEST: All right. Thank you on
4 that. I don't think I have any other questions.
5 Thank you.

6 MR. JOHNSON: All right. Thank you.

7 SEN. DUNCAN: The Chair recognizes
8 Senator Gallegos.

9 SEN. GALLEGOS: Thank you, Mr. Chairman.
10 Mr. Johnson, you said you're the
11 Assistant Registrar at Harris County?

12 MR. JOHNSON: Associate Director. I
13 have one person above me. Then he reports -- that
14 person above me reports to the Tax Collector/Assessor.

15 SEN. GALLEGOS: Who is the Director?

16 MR. JOHNSON: Leo Vasquez is the Tax
17 Collector/Assessor in Harris County now.

18 SEN. GALLEGOS: So he's the one right
19 above you?

20 MR. JOHNSON: No. I have a person in
21 between us.

22 SEN. GALLEGOS: Oh, who is the one in
23 between?

24 MR. JOHNSON: His name is George
25 Hammerlein.

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1 SEN. GALLEGOS: Who?

2 MR. JOHNSON: His name is George
3 Hammerlein.

4 SEN. GALLEGOS: Oh, okay. All right.
5 But I mean, you work in the registrar's office?

6 MR. JOHNSON: Yes. George was not able
7 to make it today --

8 SEN. GALLEGOS: Okay.

9 MR. JOHNSON: -- as your colleague
10 behind you knows because of a knee injury.

11 SEN. GALLEGOS: But he's lucky; he's
12 lucky, let me tell you. Okay. So you work in the
13 registrar's office.

14 Now, Sen. West asked you about these
15 first -- one of the first questions he asked you
16 about these -- and I live in Harris County, by the
17 way.

18 MR. JOHNSON: Yes, sir.

19 SEN. GALLEGOS: And that 13 timely --
20 13,000 timely voter registration applications had not
21 been processed for early voting. That came out in the
22 news. You worked under Bettencourt. Right?

23 MR. JOHNSON: Yes, sir.

24 SEN. GALLEGOS: Okay. It came out in
25 the news. Bettencourt was there. We had no answer

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1 from him. You didn't know that? You told Sen. West
2 you didn't know that. You're the Assistant Registrar,
3 or whatever your title is, and you didn't know that?
4 I was there. Were you there?

5 MR. JOHNSON: Where is "there" that
6 I'm --

7 SEN. GALLEGOS: In Harris County, that's
8 where "there" --

9 MR. JOHNSON: I'm there in Harris
10 County. Now, you know what I need is --

11 SEN. GALLEGOS: Well, if you didn't know
12 that and you're the Assistant Registrar, is that your
13 job?

14 MR. JOHNSON: If you give me a date --

15 SEN. GALLEGOS: Is that your job?

16 MR. JOHNSON: No, it's not my job.

17 SEN. GALLEGOS: It's not your job to
18 look at these?

19 MR. JOHNSON: It's my job to process
20 those voter registrations.

21 SEN. GALLEGOS: I understand that, sir.

22 MR. JOHNSON: If you tell me a date --
23 sir, if you tell me a date, I can tell you exactly how
24 many cards we had worked and not worked.

25 SEN. GALLEGOS: Well, I can tell you

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1 this: If I had your job, somebody asked me that
2 question, about 13,000, the majority of them
3 minorities that had not been processed when early
4 voting started, I would know that because that's my
5 job. That's what the taxpayers pay me for.

6 MR. JOHNSON: Can I ask you a question?

7 SEN. GALLEGOS: You didn't know that?

8 MR. JOHNSON: Can I ask you a question?

9 How do you --

10 SEN. GALLEGOS: No, no, no. I'm asking
11 the questions. You cannot ask questions. You're a
12 witness. I'm asking the questions.

13 Now, answer me yes or no. Is that your
14 job?

15 MR. JOHNSON: I have not seen the
16 article that you're referring to.

17 SEN. GALLEGOS: There's no article. It
18 was in the papers. Everybody, everybody, everybody
19 was arguing with Bettencourt.

20 MR. JOHNSON: Well, in the paper there
21 was an article.

22 (Simultaneous discussion)

23 SEN. GALLEGOS: Obviously you were on
24 vacation. I'm sorry.

25 SEN. DUNCAN: Let me please instruct

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1 both of you to allow -- or not talk at the same time
2 because the court reporter can't get your testimony.

3 SEN. GALLEGOS: I'll ask you again.
4 Were you -- were you on vacation during that period?

5 MR. JOHNSON: In which period of time
6 are you referring to?

7 SEN. GALLEGOS: Well, the election.
8 That's exactly the question that Sen. West asked you,
9 the election -- the election in the fall, the
10 Presidential Election when early voting started.

11 MR. JOHNSON: If you're talking about
12 the month before the election, no, I was not on
13 vacation.

14 SEN. GALLEGOS: Well, then you should
15 know these answers. That's what we pay you for. Is
16 that not correct?

17 MR. JOHNSON: I'm sorry, sir. I have
18 not seen that article. I don't know what you're
19 referring to.

20 SEN. GALLEGOS: All right.

21 MR. JOHNSON: If you would like to know
22 how many people -- how many voter registration cards I
23 had on any particular day, you know, I can -- when I
24 get back to the office, I can look that up for you.

25 SEN. GALLEGOS: That's not -- that's not

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1 the question I asked you. That is not --

2 MR. JOHNSON: Well, you're asking me
3 about how many applications we --

4 (Simultaneous discussion)

5 SEN. GALLEGOS: That is not the question
6 I asked you.

7 Okay. Let me -- let me go to the second
8 question where Sen. West asked you and you did not
9 answer him, and you're the Assistant Registrar in
10 Harris County being paid by taxpayers, that Harris
11 County disqualified nearly 70,000 -- 70,000
12 applications, the majority minority. I mean, you
13 didn't know about this? That's a lot -- that's a lot
14 of disqualifications. And you're the assistant
15 registrar. You didn't know that?

16 MR. JOHNSON: What is the time period
17 that you're talking about there in the article?

18 SEN. GALLEGOS: I just told you, right
19 before -- right before the General Election in the
20 fall of '08.

21 MR. JOHNSON: Is that -- is the month
22 before the General Election, two months, three months?
23 You know, I have to know a timeframe, and I can tell
24 you exactly how many letters we sent out of incomplete
25 during that time.

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1 SEN. GALLEGOS: Right before the
2 election.

3 MR. JOHNSON: And that is not a -- that
4 is not a disqualification. A letter of incomplete
5 just says that you have missed one of the required
6 fields in the application. It gives them another
7 opportunity to register to vote.

8 SEN. GALLEGOS: These applications,
9 these people were disqualified. Either way you call
10 it, you can call it -- you sent out a letter, whatever
11 you say, they were disqualified. They couldn't vote.

12 All right. Let me -- let me go to
13 another question.

14 MR. JOHNSON: Can I ask you a question
15 while that --

16 SEN. GALLEGOS: No, no, you can't ask me
17 a question. I'm the one asking the questions.
18 Obviously whoever told you you could testify here
19 didn't tell you the rules of the Senate, whether we're
20 in the Committee of the Whole or in a Committee.

21 Now, let me ask you, I'm looking at a
22 document that Paul Bettencourt put out, and I was
23 there because he did -- he did a PowerPoint on -- and
24 I don't know if you were there with him when he did
25 this PowerPoint. It was called the Texas Voter

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1 Registrar, Keeping It Real. Do you remember that one?

2 MR. JOHNSON: I have seen that
3 PowerPoint.

4 SEN. GALLEGOS: Have you seen the
5 PowerPoint?

6 MR. JOHNSON: Yes, I have.

7 SEN. GALLEGOS: All right. In his
8 PowerPoint -- okay. I'm going by his document, the
9 document he passed out to everybody there. I'm going
10 by his -- it says "Paul Bettencourt" on there. He was
11 the registrar, wasn't he?

12 MR. JOHNSON: Yes, he was.

13 SEN. GALLEGOS: Okay. It says here
14 "City of Houston Case Study." This is his document,
15 not mine. "The General Election of November 2001 and
16 Runoff Election December 2001, these are results of
17 the Harris County book audit on potential fraud in
18 these elections." He said the majority of what he
19 found was the wrong precinct. And there's another
20 column that a majority of what he found was not
21 registered. And in another column, the majority of
22 what he found was deleted. And then the graph goes
23 from zero to 700. It says "moved out of county" --
24 that was another one that he found -- "was right
25 under 100."

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1 Now, the real things that we're looking
2 for and what this bill is trying to clear up is felons
3 and not a citizen and deceased, which I'm going to get
4 to in a minute. On felons it looks here barely ten,
5 about ten per Paul Bettencourt's graph; not a citizen,
6 it's barely a speck on this chart; and deceased, none.
7 This is per his PowerPoint that he passed out at the
8 seminar that I was at. These are his numbers, not
9 mine, that say there was hardly anything from felon to
10 not a citizen to deceased is almost zero. It's almost
11 zero per his chart.

12 MR. JOHNSON: Can I explain this part?

13 SEN. GALLEGOS: And have you even seen
14 this chart? Do you know about this chart?

15 MR. JOHNSON: I've seen that chart. Can
16 I explain that chart, sir?

17 SEN. GALLEGOS: Go ahead and explain it.

18 MR. JOHNSON: Okay. That is a -- what
19 we refer to as a poll book audit that happened after a
20 City of Houston election in 2001. After every
21 election I told you we review the poll book -- this is
22 after the election is over with -- we review the poll
23 book to find voter registration problems or
24 discrepancies. One of the things we checked for since
25 it was a City of Houston election, they have what they

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1 call split precincts, not the whole precinct can
2 possibly be in the city. So you can have a precinct
3 that's voting, but you cannot live in the City of
4 Houston. That's what those out-of-precincts are, is
5 those people were in that precinct voting --

6 SEN. GALLEGOS: I know what they are.

7 MR. JOHNSON: -- but they didn't live in
8 the City of Houston, but they voted in the City of
9 Houston election. That is -- that is someone voting
10 in the wrong district. That is against the law.

11 The ones that moved out of county, they
12 didn't live in Harris County, and they voted in Harris
13 County. That is someone that is not registered here
14 or should not have been registered here that voted in
15 our county.

16 SEN. GALLEGOS: Were any of these --
17 were any of these what you're saying voted in the
18 wrong county, were they convicted?

19 MR. JOHNSON: They were all turned
20 over -- that whole report was turned over to the
21 District Attorney's Office, and once again --

22 SEN. GALLEGOS: All right.

23 MR. JOHNSON: -- they didn't have the
24 evidence to make the prosecution.

25 SEN. GALLEGOS: That leads me to my next

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1 question. You said you had 133 complaints that are
2 still at the District Attorney's Office. Do we know
3 if any of those were convicted? Do you know that?

4 MR. JOHNSON: No, I do not know the
5 status.

6 SEN. GALLEGOS: But you did say there
7 was 133 complaints at the D.A.'s Office, and you can't
8 tell us yes or no? You don't know?

9 MR. JOHNSON: No, the D.A. does not
10 report to me.

11 SEN. GALLEGOS: Okay. All right. All
12 right. Let's go back to your deceased. I don't know
13 how you explained it to Sen. West. Tell me the
14 process on how you -- okay. You go through the
15 Chronicle, you go through the obituaries. Is that
16 correct?

17 MR. JOHNSON: In our office our
18 procedures for finding out or trying to discover
19 deceased voters is, yes, we go through the obituaries
20 of the Houston Chronicle every day.

21 SEN. GALLEGOS: So you go through the
22 obituaries and you find out who died?

23 MR. JOHNSON: We get the probate records
24 from the probate court, and we get a list --

25 SEN. GALLEGOS: And you put them up

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1 against -- up against your list on your registrar
2 list?

3 MR. JOHNSON: Correct.

4 SEN. GALLEGOS: Okay. And you
5 determine --

6 MR. JOHNSON: We get the list from -- we
7 get the list from the Texas Health Department of the
8 deceased voters here in Texas, and then periodically
9 we also purchase the social security death index and
10 run it against the voter roll to try to find matches.

11 SEN. GALLEGOS: And that's how you
12 determine that they are deceased?

13 MR. JOHNSON: We determine that they are
14 possibly deceased. Then on those voters we actually
15 send them notices to the last known address. We call
16 it "To The Family Of" letters asking the family
17 members if they're still there to confirm our
18 findings.

19 SEN. GALLEGOS: Okay. But the 24 in
20 your testimony, that's kind of like the process you
21 went through. You went through the newspaper, you
22 went through the --

23 MR. JOHNSON: That is correct.

24 SEN. GALLEGOS: Okay. All right. Now,
25 that's a "yes." Right?

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1 MR. JOHNSON: Yes.

2 SEN. GALLEGOS: Okay. Well, let me --
3 Mr. Johnson, would it interest you to know that right
4 before the end of the year it was time for me to renew
5 my license, and I went to your office and --

6 MR. JOHNSON: Can I make a correction?
7 We do not do driver's license renewals.

8 SEN. GALLEGOS: Well, no, no, no, it's
9 under -- it's under the registrar's office.

10 MR. JOHNSON: No, we do not -- that's
11 under the Department of Public Safety. We do not do
12 driver's license renewals.

13 SEN. GALLEGOS: Well, it was Bettencourt
14 that called me.

15 MR. JOHNSON: If Mr. Bettencourt called
16 you, he wasn't affiliated with our office.

17 SEN. GALLEGOS: Well, he's the one that
18 called me. Are you sure you're not -- you're not with
19 the driver's license renewals?

20 MR. JOHNSON: Are you talking about --
21 now, are you talking about your driver's license, or
22 are you talking about your --

23 SEN. GALLEGOS: No, no, no. I'm talking
24 about -- excuse me -- my license on my car.

25 MR. JOHNSON: Your auto plates?

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1 SEN. GALLEGOS: Yeah.

2 MR. JOHNSON: The plates on your car?

3 Yes, we do do --

4 SEN. GALLEGOS: That's what you're in
5 charge of. Right?

6 MR. JOHNSON: We do do that in our
7 office.

8 SEN. GALLEGOS: Okay. That's a "yes."
9 Right?

10 MR. JOHNSON: Yes.

11 SEN. GALLEGOS: Okay. Would it interest
12 you to know that when I went to renew my license and
13 entered your office there at the registrar's office
14 that they told me I could not renew, and they told me
15 the reason was because on their rolls it showed that I
16 was deceased? Did you know that?

17 MR. JOHNSON: No, I did not know that.

18 SEN. GALLEGOS: Okay.

19 MR. JOHNSON: That is -- that is a whole
20 different department, and that is actually run by
21 TxDOT.

22 SEN. GALLEGOS: Well, wait, wait, wait
23 a minute.

24 MR. JOHNSON: And if that was a TxDOT
25 record that showed you --

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1 SEN. GALLEGOS: I went to the
2 registrar's office. It was your office. It's was --

3 MR. JOHNSON: The TxDOT --

4 SEN. GALLEGOS: At that time, was
5 Paul Bettencourt your boss or not?

6 MR. JOHNSON: Yes, he was --

7 SEN. GALLEGOS: Okay.

8 MR. JOHNSON: -- but we report to TxDOT.
9 TxDOT runs that organization. If there was your
10 record marked as deceased, it was TxDOT that marked
11 it.

12 SEN. GALLEGOS: Well, why would
13 Paul Bettencourt call me and apologize?

14 MR. JOHNSON: We are -- we are an agent
15 of theirs. I guess he was being --

16 SEN. GALLEGOS: Well, then it was your
17 people.

18 (Simultaneous discussion)

19 SEN. DUNCAN: Okay. Let me -- let me
20 interrupt. I hate to interrupt, but you're not making
21 a record. And if you want to make a record, you
22 really need -- both of you need to maintain the
23 decorum of one speaking at a time. The court reporter
24 cannot get your testimony if you're speaking over each
25 other, and both of you are doing it. It's not just

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1 one of you, both of you are. So if you could slow it
2 down a little bit and let the court reporter keep up
3 with you, that would be helpful for the record.

4 SEN. GALLEGOS: Mr. Chairman, I'm trying
5 to make a point here that it was the registrar's
6 office that was handling -- that was handling my
7 renewal of my license tag, and Mr. Johnson says that's
8 TxDOT, but it's the registrar that's handling that,
9 all the information on the registrar's computer -- on
10 the registrar's computer in that -- in that county
11 office. Is that correct? Is that yes or no?

12 MR. JOHNSON: That is a "yes" --

13 SEN. GALLEGOS: Okay.

14 MR. JOHNSON: -- that it's in our
15 office, but, sir --

16 SEN. GALLEGOS: All right.

17 MR. JOHNSON: -- you were just talking
18 about things that I need, and that's the tools I need.
19 TxDOT will not let us link into their system to copy
20 or get access to those records so that we can match it
21 up to voter rolls to find out when people move so that
22 we can send them notices or applications to try to get
23 them re-registered. So if you would like to help us,
24 pass a bill that would allow TxDOT to give us that
25 information.

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1 SEN. GALLEGOS: But it was your
2 computer, not TxDOT's.

3 MR. JOHNSON: No, it's TxDOT's
4 computers. The computers that we use in our office
5 belong to TxDOT.

6 SEN. GALLEGOS: But it was your agents
7 that were handling it.

8 MR. JOHNSON: Yes, they work for the
9 Harris County Tax Office.

10 SEN. GALLEGOS: Okay. All right.

11 MR. JOHNSON: The computer system is
12 TxDOT's, and it's closed, and they do not let us have
13 access to it.

14 SEN. GALLEGOS: Well, if you had me
15 deceased there on that computer at the registrar's
16 office, whether it's TxDOT or not, and your agents
17 were handling it, if I had -- if I had voted during
18 that time that you had me deceased, would I show up --
19 would I show up on your rolls?

20 MR. JOHNSON: You were still a
21 registered voter on our rolls. That TxDOT record has
22 nothing to do with your voter registration.

23 SEN. GALLEGOS: That's not what -- that
24 wasn't my question. On your computer, the computer
25 that your agents handle --

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1 MR. JOHNSON: On the computer that I'm
2 in charge of that handles the voter registration roll,
3 you are an active voter.

4 SEN. GALLEGOS: How do you know that?

5 MR. JOHNSON: Did you vote?

6 SEN. GALLEGOS: I'm talking -- yeah, I
7 voted, but I'm talking about during the time --

8 MR. JOHNSON: Then you're an active
9 voter.

10 SEN. GALLEGOS: -- during the time that
11 the computer showed that I was deceased, had I voted,
12 would I be on that list with those 24? Yes or no?

13 MR. JOHNSON: No, you would not have
14 been on that list.

15 SEN. GALLEGOS: Are you sure?

16 MR. JOHNSON: I'm sure.

17 SEN. GALLEGOS: You're positive?

18 MR. JOHNSON: I'm positive.

19 SEN. GALLEGOS: Okay. All right. So --
20 and your office is not -- so you're saying it's
21 Beverly Kaufman's Office that's in charge of the last
22 question that Sen. West asked you on the provisional
23 ballots given after seven o'clock instead of letting
24 them cast their ballots. Is that correct?

25 MR. JOHNSON: That is correct.

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1 SEN. GALLEGOS: Okay. Mr. Johnson,
2 thank you.

3 SEN. DUNCAN: Mr. Johnson, I don't think
4 there's any other queued up. If you want to -- you
5 are excused. Thank you for your testimony.

6 MR. JOHNSON: Thank you.

7 **TESTIMONY BY DANIEL B. KOHRMAN**

8 SEN. DUNCAN: The Chair calls
9 Daniel Kohrman. Mr. Kohrman, do you have written --
10 you have written testimony, I believe. It will be
11 Exhibit No. --

12 MR. KOHRMAN: Yes, sir.

13 SEN. DUNCAN: -- 35. We'll go ahead and
14 put that in the record.

15 (Exhibit No. 35 marked and admitted)

16 SEN. DUNCAN: If you'll state your name
17 and who you represent, and you have ten minutes.

18 MR. KOHRMAN: Thank you. Good morning,
19 Mr. Chairman, Members of the Committee. My name is
20 Daniel Kohrman. I'm a senior attorney with the AARP
21 Foundation. The foundation is the charitable arm of
22 AARP. I represent AARP, AARP's members and older
23 persons generally.

24 One of my responsibilities is to
25 represent the cause of access to the ballot for older

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1 voters. By way of background, I'm one of the lawyers
2 for voters, including older voters, in the litigation
3 regarding photo ID in Arizona and in Georgia. I've
4 also filed briefs on behalf of AARP in photo ID cases
5 in Michigan and Missouri in the state courts and also
6 in the U.S. Supreme Court in the Indiana case that
7 we've discussed. Finally, AARP has filed a brief
8 supporting the senior citizen plaintiffs in the
9 absentee ballot case here in Texas, the Ray case that
10 we discussed a little earlier this evening.

11 And just so that you know a bit more
12 about me before I came to AARP, about seven years ago
13 I worked for a big law firm, a civil rights
14 organization, the lawyers committee that you heard
15 about before, and also for the U.S. Department of
16 Justice.

17 As you know, AARP members vote in very
18 large numbers and are very proud of their active
19 participation in the political process at all levels,
20 state, local and federal. I work out of the
21 headquarters in D.C., but today I'm here representing
22 AARP of Texas, which is one of 53 state offices we
23 have across the U.S.

24 I want to say that given the intense
25 partisanship that we've seen here today and that has

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1 developed around this issue of voter ID, photo ID, I
2 want to emphasize that AARP is a nonprofit nonpartisan
3 organization dedicated to addressing the needs and
4 interests of Americans age 50 and older. AARP has no
5 interest in the partisan aspects of the photo ID
6 issue.

7 What we do care about is representing
8 the interests of older Americans. We have more than
9 40 million members nationwide and about two and a half
10 million here in Texas, and both in this state and
11 across the U.S. We're the largest membership
12 organizations of older persons and older voters.

13 All right. While I appreciate the
14 opportunity to speak with you here so late and so
15 early about Senate Bill 362, just to start, I want to
16 say that AARP's overall perspective is that the right
17 to vote is the most basic right in our Democratic
18 system, and our view is that legislative bodies and
19 politicians should tread carefully in the field of
20 voting rights. Voting rights should not be casually
21 restricted.

22 Now, we understand that historically and
23 under our Constitution the states are the principle
24 sources of laws and regulations in the area of voting,
25 but we do not conclude from this that states should

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1 feel free to take whatever action is expedient.
2 Certainly where there's a need to act to protect
3 voters, there's a duty to step forward. But absent
4 such a need, our view is that states have a duty not
5 to rush in. And as it is said of doctors, so it is
6 true in the field of voting and elections, first do no
7 harm.

8 AARP policy is clear. We have focused
9 on trying to encourage simple, fair procedures. And
10 most relevant for our purposes here today our policy
11 states that state government should adopt procedures
12 to detect and prevent voter fraud, but policies that
13 do not permit arbitrary and discriminatory reviews, ID
14 challenges and misuse of provisional ballots in ways
15 that discourage voter registration and turnout. And
16 our concern about photo ID laws is that they do just
17 that.

18 Just this past Sunday in the Rio Grande
19 Guardian, the paper reported one in five senior woman
20 don't have a driver's license, quoting the U.S. Census
21 Bureau. 18 percent of Americans over age 65 don't
22 have a driver's license, quoting the Brennan Center
23 from whose representative you heard earlier today, and
24 also that 37 percent of Texans over 80 don't have a
25 driver's license.

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1 We did some surveys in connection with
2 some of the litigation matters you've heard about. In
3 Indiana our survey suggested that 3 percent of people
4 over 65 have neither a driver's license nor a
5 state-issued ID, and that's about 23,000 people. In
6 Georgia our estimates suggested over 100,000 over age
7 65 lack a driver's license and the number is something
8 like double that in Missouri.

9 What's hard to understand for us is why
10 public officials would embrace measures that have this
11 kind of impact on older voters when in the next couple
12 of decades the older population will be growing by
13 leaps and bounds so that most of the growth in the
14 voting population will be among the older voters.

15 I want to refer you to testimony that
16 AARP Texas' Advocacy Director Amanda Fredericksen gave
17 to a House Committee in 2006 noting some of the harms
18 and difficulties posed for older persons who seek to
19 access the ballot, but are caught up in photo ID
20 requirements and are precluded from voting.

21 There was an 80 year old who sought a
22 state-issued ID card in Indiana. We put this in our
23 Supreme Court brief. She finally succeeded only after
24 paying multiple fees, navigating a maze of public
25 record laws and making multiple trips to public

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1 offices. And then there was a 61-year-old social
2 security recipient who was barred from voting in the
3 lobby of her retirement home as she had done for past
4 elections. Poll workers who had known her for years
5 were not allowed to let her vote because she didn't
6 have the form of ID, and we're concerned that's going
7 to happen in Texas.

8 Now, let me cut to the chase here, and
9 I've summarized in my testimony some major concerns we
10 have with this law in particular. We've talked about
11 big picture issues, other states, other cases and
12 we've talked, to some degree, precious little about
13 the actual bill that's before this chamber.

14 The first concern is that the law does
15 very little to educate the public about the changes it
16 proposes to make. It relies almost exclusively on the
17 individual voter registration renewal process. It
18 relies on Websites, the Secretary of State and the
19 counties, but as far as I understand it, only
20 one-third of the counties actually have Websites.

21 Our members in particular, I would have
22 the concern, would both be adversely affected by a
23 process that relies on a routine mailing procedure.
24 They have voted for many, many years and cannot be
25 expected to automatically pick up on all the new

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1 changes. More likely they're going to assume that
2 their registration is just as it has been before. And
3 as far as Websites, our members are getting ever more
4 tech savvy, but relying on the Internet to serve older
5 voters is a dangerous proposition.

6 The second concern is a related one.
7 There's lack of plans for public outreach. One way to
8 describe the approach of this bill, in our frame of
9 thinking, is that it's completely passive. You get a
10 mailing, you have a bit of information posted on a
11 Website. There's nothing going out to the public.
12 There's nothing going out in terms of mobile vans as
13 there was in Georgia or other public education. We
14 heard about advertisements. I noted that nothing of
15 that was planned to involve photo ID in particular.

16 As far as the substantive concern about
17 what the experience is like for voters, I just want to
18 make two quick points.

19 SEN. DUNCAN: I've been holding
20 everybody pretty strict. If somebody wants to ask a
21 question --

22 MR. KOHRMAN: Okay.

23 SEN. DUNCAN: I think Sen. Uresti --
24 your time has expired.

25

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QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: Sen. Uresti, you're recognized.

SEN. URESTI: Thank you, Mr. Chairman.

Mr. Kohrman, good morning, and I'll follow up on what you were just completing in a moment, but I wanted to go back to something that you just talked about with regard to the Websites. And I think you mentioned in your testimony one-third of the counties have Websites. But do you have an idea of how many of your members actually have a computer much less access to the Internet?

MR. KOHRMAN: Well, I would say two things: One, I think it's very easy to stereotype older voters and older people. I think more and more of them -- the profile is more typical of the average population than what most people think. But the plain fact of it is when you look at people who are infirm, older people with disabilities that is, older people in assisted living or nursing homes, those kinds of residential situations, people of low income certainly, they are very unlikely to have access to the Internet and very unlikely to benefit from that kind of information.

SEN. URESTI: And one of the reasons I

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1 bring that up, and I realize many of our seniors are
2 more advanced when it comes to the Internet, but
3 speaking about my parents specifically and they're in
4 their 70s, very intelligent. However, my father
5 refuses to use a computer, probably because he doesn't
6 know how, much less accessing the Internet. So I'm
7 sure that there are many other seniors in Texas,
8 specifically in the district that I represent, that
9 don't have access.

10 You were about to complete a sentence,
11 and I know the time cut you off. Would you like to
12 finish that thought?

13 MR. KOHRMAN: No. I just -- that the
14 public outreach activities that were demanded by the
15 court in Georgia, in effect, are very much relevant
16 here because what we have is a law that proposes to
17 take effect at the very beginning of 2010 and yet
18 relies almost completely on a notification process in
19 the course of renewing registrations that has, as I
20 understand it, a two-year cycle.

21 Therefore, in our view, the minimum time
22 that should be required for this set of new
23 requirements to be effective should be at least two
24 years and probably longer than that so that you have a
25 whole cycle. If you're going to rely on mailings that

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1 people will only get some time in the next two years,
2 it should be a cycle that long at least before this
3 law takes effect.

4 SEN. URESTI: And the reason for the two
5 years is so that you can allow for training and
6 outreach?

7 MR. KOHRMAN: Well, in the first place,
8 there's no guarantee that people will be notified of
9 the requirements of the law at all. Given that
10 there's nothing in this bill by way of funding or
11 programs, at least as far as I can tell, to contact
12 voters about the specific requirements of photo ID,
13 people won't know. And what you will have is people
14 showing up at the polls, registered voters who have --
15 who expect that they can vote on the terms they always
16 have. And what they will find -- in particular in
17 some circumstances, they will come perhaps without
18 their registration. And under current law if you come
19 without your registration but you're on the rolls, you
20 sign an affidavit and you cast a regular ballot. But
21 under the law as it would be revised, you have to show
22 photo ID.

23 Now, if you haven't had notice except if
24 you read the papers closely enough to know what this
25 body and the House may pass someday, you're not going

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1 to know that requirement. And so what you're going to
2 do is you're going to show up -- and we think that's
3 typical of our members. They are going to do what
4 they've always done, they're going to show up, they
5 may forget, they may misplace, they may lose, they may
6 not get in time their certificate. They show up to
7 vote and whereas in the past they could just sign an
8 affidavit, cast a regular ballot, they'll have to file
9 a provisional ballot that won't be counted, and that's
10 a big problem for us.

11 SEN. URESTI: And we've heard over the
12 past several hours of testimony from some of my
13 colleagues that it's no big deal, that you can just
14 show up with an electricity bill or another piece of
15 documentation, but I would assume that many of our
16 seniors may be widowed, and some of the documentation
17 that they have was in their husband's name, for
18 instance, or perhaps in their wife's name. And as you
19 said, Mr. Kohrman, they may show up, they may be
20 waiting for a ride from one of their sons or their
21 neighbors at the end of the day. By the time they do
22 show up to vote, they will not have that
23 documentation. Do you think that's going to be a
24 problem for our seniors when it comes time for voting?

25 MR. KOHRMAN: Well, we've heard from a

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1 number of people about problems with some of the
2 specific alternative forms of identification that have
3 been alluded to by some of the proponents. And of
4 course older voters have and older persons have
5 particular problems with some of those forms of ID,
6 very much so. Older women may have been -- have moved
7 into the state from other states. They may have
8 marriage certificates from -- with a name that's -- in
9 other words, the documents that they might need to get
10 a birth certificate are different in name than their
11 current married name, they've changed their name. And
12 so if they have to get an out of state marriage
13 document or divorce decree or birth certificate,
14 they're going to have trouble.

15 We've had problems in many of these
16 southern states with older -- older woman, older men
17 who were born -- and this really applies to people of
18 color in particular who were born outside of hospitals
19 and may not even be able to get a birth certificate.

20 SEN. URESTI: Do you see any potential
21 barriers for our seniors that are trying to obtain a
22 photo identification?

23 MR. KOHRMAN: Well, what is of concern,
24 as I've said, is the fact that there's no -- there's
25 no effort to notify them, and there's not a realistic

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1 set of measures that will likely notify them.

2 Furthermore, there appears to be no plan
3 or money for training of the actual people who will
4 interact most often and most intensely at the polling
5 place with all voters, but particularly older voters,
6 election officers so called. There appears to be no
7 money or plan for training these folks so that when
8 people show up at the polls surprised by the new laws
9 and the changes, what we're concerned about is that
10 our people will have particular troubles, especially
11 if a lot of folks that they're going to have to
12 interact with are given insufficient training.

13 SEN. URESTI: Mr. Kohrman, do you think
14 there will be additional barriers if this legislation
15 does pass for the voters that may reside with family
16 members who are in an assisted living facility or in a
17 nursing home?

18 MR. KOHRMAN: Well, that raises the
19 issue of outreach again. Our fundamental view is
20 that -- and you've heard this from many people -- that
21 this is an issue that is a solution that's looking for
22 a problem. Our view of it is that what this chamber
23 should focus on is the fact that there are lots of
24 voters who need assistance and encouragement and
25 facilitation to get them to vote.

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1 We have lots of people, for instance,
2 who change addresses when they move into different
3 residential facilities when they become somewhat more
4 infirm or interested in finding a situation where they
5 can age in place and have access to medical care.
6 When they change their address and if they don't have
7 family who are looking out for them, what they may
8 need is registrars who are going out to facilities
9 where older people are to register people to vote and
10 to help them to vote.

11 There are states across this country
12 that have allocated resources, not to these ID checks
13 that we feel are not very productive and not likely to
14 solve this supposed problem of fraud, but instead of
15 allocating their resources to seek out voters who
16 have -- who are not participating but want to
17 participate. So we would like -- we would like state
18 officials and county officials to be seeking out older
19 voters who are still capable of voting, but may have
20 mobility challenges that keep them from voting like
21 they did 10, 20 years ago.

22 SEN. URESTI: Mr. Kohrman, we've heard
23 testimony about different forms of nonphoto
24 identification, and one example that I heard earlier
25 was Texas -- was a Medicaid card. Do you know if

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1 Texas actually issues a Medicaid card?

2 MR. KOHRMAN: Well, I apologize. I
3 don't really know that, but there may be -- there may
4 be some forms of this photo ID that are available to
5 many seniors, and we're not saying that this is an
6 impossible situation, but I will say about the best
7 you can say about this photo ID proposal is that it is
8 not as harsh and not as bad as the most restrictive
9 laws in a few states, but it imposes all kinds of
10 burdens on voters who are the most committed to
11 participating in our democracy, which are older
12 voters, and it's going to make a lot of unnecessary
13 impediments.

14 If you imagine the situation -- another
15 situation that's covered by the law, which is someone
16 who shows up at the polls who has their voting card
17 but isn't on the rolls, and that's, I think, Section 9
18 of the bill. Right. It seems to me that that would
19 be another situation where instead of requiring a
20 photo ID, what you should require is a -- is an
21 affidavit, which under other circumstances is provided
22 for under current law.

23 A lot of these older voters are well
24 known to people at their polling place. There's no
25 need to impose these additional requirements. I would

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1 find it highly dubious if I were to hear that there is
2 any evidence or any record that older voters in
3 particular pose a problem of fraud, that there's any
4 worry that people 50 -- age 50 and older are the ones
5 who have been identified as posing a risk of illegal
6 voting activities.

7 What we need to do is to reach out, take
8 advantage of the fact that these mature voters are
9 very committed to participating and yet face a variety
10 of challenges over time as they age that makes it more
11 difficult for them to participate. This law raises
12 barriers where there need be no such barrier.

13 SEN. URESTI: And, Mr. Kohrman, by
14 placing those additional barriers through this bill on
15 our seniors, do you -- is it your opinion that there
16 will be some seniors that may not be able to vote come
17 election day?

18 MR. KOHRMAN: Well, it's interesting.
19 We've heard a lot of back and forth about what
20 aggregate data shows. You know, a state -- a state
21 shows big increases in turnout, and some people think
22 they know exactly what the sole cause of that is, and
23 supposedly it's photo ID.

24 I think -- and this is by way of
25 answering your question. I think what we -- what

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1 we -- what's most important here is what we don't see
2 in the numbers. You can't measure the effect on
3 people who are deterred from voting particularly when
4 their numbers are swamped by turnout increases that
5 result from a variety of causes. And what we fear is
6 that lots of older voters -- and remember older voters
7 are going to be a growing population. So to some
8 degree if you just have a gradual growth in the
9 turnout of older voters, that's a problem because
10 that -- this should be a very significant growth trend
11 as the population ages.

12 So what we're concerned about is that
13 people will -- whether they're in their 50s and have
14 disabilities, whether they're in their 40s, for that
15 matter, but certainly greater numbers in their 60s and
16 70s who are very avid voters, you know, voting for
17 some of our seniors is the highlight of the year or a
18 highlight of their life. It shows that they are still
19 active, they're still engaged, they're still
20 contributing to society. And what we fear is that if
21 the impediments grow and become more diverse, they're
22 just not going to show up. And so what is important
23 is what we won't see.

24 And again, when the numbers are growing
25 in terms of older voters, what you'll see is an

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1 increase. And so people will say, "Well, older voters
2 are growing in greater numbers, so there's no
3 problem," and we think that's just a very
4 short-sighted and narrow view that isn't called for.

5 SEN. URESTI: That's all the questions I
6 have, and thank you, Mr. Kohrman. Thank you,
7 Mr. Chairman.

8 MR. KOHRMAN: Thank you.

9 SEN. DUNCAN: The Chair recognizes
10 Sen. Ogden.

11 SEN. OGDEN: Mr. Kohrman, I represent a
12 lot of people in the AARP, and I wonder --

13 MR. KOHRMAN: Glad to hear that.

14 SEN. OGDEN: I wonder how you purport to
15 represent them. How does the AARP, when you talk on
16 behalf of the AARP, come to the position that you have
17 espoused?

18 MR. KOHRMAN: Well, you may know, you
19 may be surprised, I don't know. We spend a great deal
20 of time and effort surveying our membership. I would
21 venture to say more so than any membership
22 organization in the United States we allocate more
23 resources.

24 SEN. OGDEN: So you surveyed your
25 membership on this state law? Did you survey the

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1 Texas membership, or did you just survey the
2 membership of the Continental United States? What
3 membership did you survey?

4 MR. KOHRMAN: Well, now you're -- now
5 you're taking what is a huge allocation of resources
6 suggesting it should be even probably more than anyone
7 would suggest reasonable. No, Senator, we don't -- we
8 do not every year survey nationally and statewide --

9 SEN. OGDEN: All right. So then --

10 MR. KOHRMAN: -- on every proposal, but
11 we have surveyed on the specific issue of photo ID.
12 I'm sorry. I'm not trying to filibuster here. I just
13 want to answer on photo ID, but also more generally on
14 government integrity.

15 SEN. OGDEN: All right. So what was the
16 result of your survey on the Texas voter
17 identification bill?

18 MR. KOHRMAN: Well, we haven't surveyed
19 on the Texas bill because, of course, I don't think
20 it's been out there very long, but we have the Georgia
21 law, we have the Arizona law. And frankly, Senator,
22 there is a commonality to a lot of these laws, and
23 that's what we built on.

24 SEN. OGDEN: Okay. So what was the
25 result of your survey amongst Texans who are members

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